

Health Litigation in Brazil New Precedents and Future Perspectives

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Abstract:

Background: Health litigation in Brazil has expanded as patients seek access to care that is unavailable or denied through public and private health systems. Judicial decisions can protect individual rights while affecting health policy, equity, and resource allocation.

Materials and Methods: This exploratory, descriptive study examined judicial decisions issued between 2020 and 2023 by Brazil's higher courts and selected state courts. A qualitative documentary analysis addressed medicines, procedures, private health plan coverage, and state liability.

Results: The article identifies recurring claims involving high-cost and unregistered medicines, complex procedures, emerging technologies, and mental health care. It reports a 15% increase in claims for high-cost medicines compared with 2017–2019, alongside greater judicial scrutiny of experimental treatments and efforts to standardize decisions.

Conclusion: Judicial protection of the right to health requires decisions grounded in clinical evidence and coordinated with health policy. Stronger administrative responses and clearer criteria may help reconcile individual access with equity and the sustainability of the Unified Health System.

Keywords: Health litigation; Judicial precedents; Right to health; Unified Health System; Public policy.

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I. INTRODUCTION

The Brazilian Constitution of 1988 established health as a fundamental right and a duty of the state. The creation of the SUS expanded universal access, but budget constraints, administrative barriers, and regional inequalities have continued to generate unmet needs. Litigation, initially concentrated on medicines and procedures outside public coverage, now also reaches experimental interventions, technologies, protocols, and private health plan coverage.¹⁻⁴

Court orders may secure access that would otherwise be denied, while individual decisions can affect budgets, collective priorities, and the uptake of interventions without adequate evidence. These tensions involve the separation of powers, administrative discretion, and the effectiveness of social rights.⁵⁻¹⁰ This article examines judicial trends and precedents associated with 2020–2023 and considers their implications for health policy, equity, and the sustainability of the SUS.¹¹⁻¹³

II. LITERATURE REVIEW

The literature describes a shift from fragmented decisions in individual cases toward broader legal criteria and binding precedents. Such criteria seek to reconcile individual claims with collective planning, especially when technologies are complex or costly.^{1-3, 6, 14} Judicial intervention can prompt institutional accountability and access to care; it may also disrupt resource allocation when decisions bypass established protocols and priorities.^{8-10, 12} Unresolved questions include whether higher court precedents consistently guide lower courts, how scientific uncertainty should be treated, and how new technologies should be assessed before incorporation. The article places these questions alongside the need for effective administrative responses and dispute resolution.^{4, 14}

III. METHODS

This exploratory and descriptive study used documentary and jurisprudential analysis, with qualitative content analysis of judicial decisions. The stated period was January 1, 2020, through December 31, 2023. The sources were the official jurisprudence portals of the STF, STJ, and five state courts from different Brazilian regions, supplemented by legal and doctrinal platforms. Searches used terms relating to health litigation, the right to health, medicines, medical procedures, health plan coverage, and state liability.^{2,3,7,16}

Eligible topics included registered or unregistered medicines, high-cost or experimental therapies, surgery, complex examinations, procedures outside SUS standards, private health plan coverage, and civil liability for deficiencies in care. Each ruling was considered by theme, court, outcome, relevant legal thesis, reasoning, and, where available, dates, parties, amounts, and legal provisions. The stated analysis sought recurring arguments and implications for policy.^{12,14} The source article does not identify the five state courts or give the number of decisions analyzed.

IV. RESULTS

The article identifies three prominent groups of claims: off-label or unregistered medicines; high-complexity procedures and emerging technologies; and mental health and continuing treatment. For medicines, the decisions described vary according to evidence of efficacy, medical necessity, regulatory status, and the availability of alternatives within the SUS. The article reports that claims for high-cost medicines increased by 15% relative to 2017–2019; it gives no underlying counts or calculation. It also describes favorable rulings for patients with documented need and increasing caution about experimental products.^{1,8–10,12}

In oncology, some orders granted innovative therapies outside SUS lists on grounds of dignity and the state duty to provide care, whereas other requests were denied when efficacy was uncertain or an incorporated alternative was available. Claims for intensive care beds and deferred elective surgery affected hospital planning during the COVID-19 period; telemedicine also entered the disputes discussed.^{4,7,10}

The article further describes efforts by higher courts to standardize criteria for medicine claims and improve predictability. In supplementary health, disputes concern procedures outside the National Supplementary Health Agency (ANS) list and exclusions for experimental or aesthetic care.¹⁷ Mental health claims include specific therapies, such as applied behavior analysis for children with autism spectrum disorder, and prolonged specialized hospitalization; the duration and scope of coverage vary between decisions.²¹

V. DISCUSSION

The findings illustrate the tension between individual enforcement of the right to health and the equitable use of limited public resources. Requests for costly medicines and specialized mental health care may reveal service gaps, yet court orders centered on particular technologies can affect services for the broader population.^{1,8,11} Binding precedents may reduce inconsistent judgments and improve planning, although rigid criteria may fail to capture the clinical circumstances of individual cases.^{2–4,7}

More detailed clinical reports and technical opinions in lawsuits may improve the grounds on which decisions are made, but also underscore the need for responsive administrative routes. The article points to health technology assessment, clearer incorporation criteria, cooperation among government branches, and mediation or conciliation as ways to reduce recurring disputes.^{5,9,10,12,13,21,23,24} These proposals require attention to evidence, access, and the continuing ability of health services to respond during crises.⁷

VI. CONCLUSION

Health litigation in Brazil continues to evolve around high-cost medicines, mental health treatment, technologies, and private coverage. The article describes attempts to standardize judicial decisions while preserving individual access; it calls for stronger institutional responses, evidence-informed decisions, and cooperation across the legal and health systems.^{2,3,8,12} Its conclusions are limited by the 2020–2023 temporal scope and qualitative design. Future research should extend the period, examine regional cases, and measure costs and the effects of court decisions.^{9,13,16}

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