

# THE JUDICIALIZATION OF HEALTH IN BRAZIL AND GOIÁS: A BIBLIOGRAPHICAL STUDY OF SPENDING AND GOVERNANCE

## A JUDICIALIZAÇÃO DA SAÚDE NO BRASIL E EM GOIÁS: UM ESTUDO BIBLIOGRÁFICO DOS GASTOS E GOVERNANÇA

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### RESUMO

O presente artigo se utilizou de bases de dados eletrônicas, que são ferramentas de conhecimento, e possibilitou um maior desenvolvimento científico, em relação à temática apresentada, sobre a judicialização da saúde e os gastos no Brasil e no estado de Goiás, mais especificadamente. É um tema ainda não muito explorado, mas que teve a possibilidade de consultar cinco artigos científicos, elaborados entre 2017 e 2023, e duas reportagens, uma do Conselho Nacional de Justiça e outra de jornal de grande circulação, *O Popular*, com sede em Goiânia. A partir da seleção das publicações, foram apresentados os principais pontos discutidos, entre eles o excessivo número de judicializações, os medicamente requeridos, que não fazem parte, na maioria das vezes, da listagem da Agência Nacional de Vigilância Sanitária (Anvisa) e os gastos pelo Poder Público para a aquisição obrigatória desses insumos. Na discussão dos resultados, cada artigo foi apresentado em separado e extraído deles os principais pontos de convergência e de divergência, até mesmo com a apresentação de gráficos e de tabelas, para amostragem real de números de ações, e o montante gasto pela Administração Pública. Os resultados apontaram uma grande demanda processual em que se envolvem médicos, gestores e Ministério Público, na espera de uma sentença procedente, mas se esquecendo de que os gastos são dirigidos a uma pequena parcela da população, o que pode gerar consequências para a manutenção da saúde como um todo.

**Palavras-Chave:** Ações. Saúde. Dignidade. Gastos.

### ABSTRACT

This article used electronic databases, which are knowledge tools and enabled greater scientific development, in relation to the theme presented, on the judicialization of health and spending in Brazil and the state of Goiás, more specifically. It is a topic that has not yet been explored much, but despite this, it was possible to explore five scientific articles, prepared between 2017 and 2023, and two reports, one from the National Council of Justice, and the other from a large circulation newspaper, *O Popular* (The Popular), with headquarters in the city of Goiânia. From the selection of publications, the main points discussed were presented, including the excessive number of judicializations, the medically required ones, which are not part, in most cases, of the list of the National Health Surveillance Agency – ANVISA and the expenses by the Public Power for the mandatory acquisition of these inputs. In the discussion of the results, each article was presented separately, and the main points of convergence and divergence were extracted from them,

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including the presentation of graphs and tables, for real sampling of numbers of actions, and the amount spent by the Public Administration. The results showed a great procedural demand, in which doctors, managers and the State Prosecution are involved, waiting for a valid sentence, but forgetting that the expenses are directed to a small portion of the population, which can generate consequences for the maintenance of health as a whole.

**Keywords:** Actions. Health. Dignity. Spending.

## INTRODUCTION

Managing healthcare services is of unparalleled importance, as it is the responsibility of the State to provide quality of life and dignity to the population. It is a concern for all managers, in respect for the fundamental right to health, which must be provided by the State.

The big obstacle is when the search for health is made through the courts, without considering the costs arising from countless well-founded judgments, when faced with the reality of the judicialization of health in Brazil. Therefore, the general aim of this article is to show how much of the public budget to be invested in health is being diverted to pay for lawsuits, which are growing even more every day.

As a result, there is a problem when it comes to complying with these decisions, spending becomes higher and it becomes impossible to invest in all health sectors. The number of beneficiaries is minimal when it comes to a court decision. And this is what the articles and reports analyzed have shown.

The method used was a bibliographical study, which is supported by the need to assess the productivity and quality of research by actors who have written about the proposed topic, thus allowing the detection of models and patterns of understanding by different researchers.

This type of study has been in high demand and was a welcome experience for the proposal of this subject, as it verified the issue of the excessive number of judicializations in relation to medicines in Brazil, and identified people who have studied the subject and were able to show perspectives on spending, and the management of these health resources.

The topic chosen was delimited to the state of Goiás. No specific articles were found on this region, but reports and studies carried out by the Judiciary, the CNJ and the TCU on spending and finances were used. The item below shows in table form which articles were selected, for a better didactic observation of the subject.

## 1 METHODOLOGY

This research will be based on bibliometrics and it will use a number of scientific articles searched in databases such as SciELO and Google Scholar. These sites aim to prepare, store and disseminate electronic scientific production, but in electronic format, and this is how bibliometric indicators are found.

In a scientific environment of intense research, bibliometrics studies this collective productivity. Through bibliographic sources, it identifies the relationships among understandings of the authors, as well as points of convergence, trends and criticisms. It also aims to enable a survey of bibliographical references that is duly related to the object of study (Spinak, 1996; Leite Filho, 2008; Oliveira, 2012).

The selection of existing publications, including reports in local journals and government websites, was based on keywords related to the subject, specifically judicialization, public spending, governance and the location of the state of Goiás. The data extracted covers the years 2015 to 2023.

The primary study, in addition to the analysis of spending, in comparison, was the perspectives shown in the view of the authors of this excessive judicialization and the spending resulting from it, even in the state of Goiás. The spreadsheet below indicates which articles and reports were selected for the discussion below:

**Table 1 - Articles and reports as a basis for the scientific paper.**

Author	Title	Year
Silva, M. da V C	The Economic Impact of the Judicialization of Health in Brazil: A Proposal for Democratic Formative Practices in the Governance and Management of Social Services	2019
Juliana Ribeiro Ferreira	Judicialization of health: The impact of lawsuits related to immunobiologics for immuno-allergic diseases on the health budget	2021
Ana Isabel Fernández Lara		

	of the state of Goiás	
Santos Filho, Jardim and Vieira (2022)	Judicialization in Health	2022
Almeida, T. Faita	The (In)Effectiveness of the Judicialization of Health for the Supply of High-Cost Medicines	2023
TCU	Public spending increases with judicialization of health	2017
Ministry of Health - Union	Judicialization of Health within the Union in numbers: Extraordinary Appeals 566471 and 657718, produced in 2017	2017
O Popular (The Popular)	Judicialization in the state of Goiás	2023

Source: the author

After presenting the meaning of the bibliometric method used in this work, as well as the table with the texts used, we move on to the discussion and presentation of the results achieved.

## 2 DISCUSSION OF RESULTS

With the bibliographic support of scientific articles and reports, in order to build a multidisciplinary approach, we will now delimit the production of authors and reports on the subject, with the aim of verifying their thinking in relation to spending and excessive lawsuits in this area in Brazil.

### 2.1 Judicialization of Health and Public Spending

The first scientific article identified with this theme was published in the Scientific Journal Humanities and Innovation, entitled Economic Impact of the Judicialization of Health in Brazil: Proposal for democratic training practices in the governance and management of social services.

In the structural context, deficiencies were identified in the health governance and management platforms, which are the responsibility of the executive branch. The conclusion

was that when there is dialogue between the public authorities, universities and society, there is rationalization of budget resources and greater optimization of this social service. Graphs show the results of this research. See:

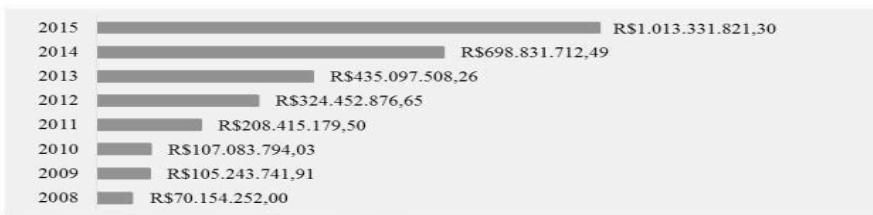
**Picture 01 - Graphs from the survey above**

**Gráfico 1 – Total de processos recebidos pelo Ministério da Saúde de 2010 a 2014.**



**Fonte:** Acórdão nº 1787/2017 – TCU – Plenário.

**Gráfico 2 – Total gasto pelo Ministério da Saúde no cumprimento de decisões judiciais, de 2008 a 2015.**



**Fonte:** Acórdão nº 1787/2017 – TCU – Plenário.

**Source:** Silva, 2018

**Graphic 1 - Total cases received by the Ministry of Health from 2010 to 2014**

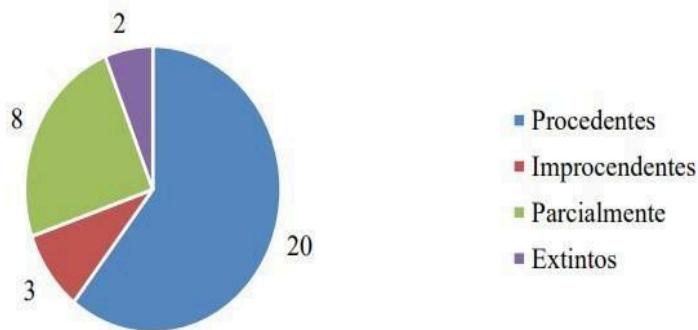
**Graphic 2 - Total spent by the Ministry of Health to comply with court decisions, 2008-2015**

The second article entitled on “Judicialization of Health: The impact of lawsuits related to immunobiologics for immuno-allergic diseases on the health budget of the state of Goiás”, published in the Brazilian Journal of Development in 2021, portrays the search for the Judiciary to guarantee a health demand, with the aim of analyzing spending on welfare in the state of Goiás.

A real impact of this excessive judicialization was observed between the years 2018 and 2020, and it was found that the percentage of budgetary impact for the state was small, in proportion to the number of lawsuits, although the expenditure was significant. It was concluded that new social policies need to be formulated by the public authorities in order to avoid judicialization and thus reduce spending on endless lawsuits. In a graphical analysis, the authors specified the number of sentences and the amount spent. See:

### Picture 02 – Number of sentences

Gráfico 1 – Sentenças judiciais dos processos que requerem imunobiológicos para doenças alérgicas.



Fonte: Elaborado pelo autor.

Graphic 1 - Court rulings on cases requiring immunobiologics for allergic diseases

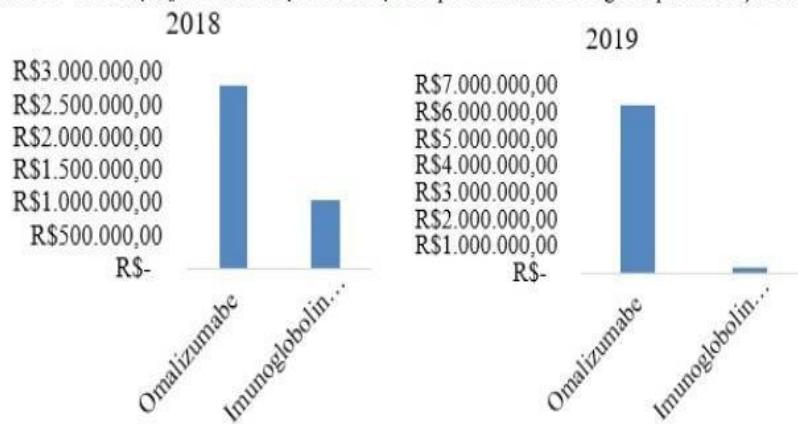
appropriate  
inappropriate  
partially  
extinct

Source: The author

With regard to itemized spending, the authors described the following:

### Picture 03 - Detailed expenses

Gráfico 2 – Sentenças judiciais dos processos que requerem imunobiológicos para doenças alérgicas.



Graphic 2 - Court rulings on cases requiring immunobiologics for allergic diseases.

Source: The author

Santos Filho, Jardim and Vieira (2022), in an article published for the Health Undersecretariat, Health Information and Strategies Management, CONECTA-SUS, gave a

picture of the judicialization of health, specifying that both individual and collective requests for medicines through the courts are recurrent. He added that in the state of Goiás alone, 3,157 lawsuits were filed in 2021, and the cost to the public purse reached 90 million reais. The table below, taken from the article, shows this reality.

**Picture 04 - Lawsuits costs**

	Nº de processos	Valores
Bloqueio judicial de recursos financeiros	735	R\$ 30.574.814,00
<b>Medicamentos não padronizados no SUS</b>	<b>3157</b>	<b>R\$ 90.114.264,34</b>
Medicamentos padronizados no SUS	904	R\$ 3.723.039,76

	Number of lawsuits	Values
Judicial blocking of financial resources	735	R\$ 30.574.814,00
<b>Non-standardized medicines in the SUS</b>	<b>3157</b>	<b>R\$ 90.114.264,34</b>
Standardized medicines in the SUS	904	R\$ 3.723.039,76

**Table 1** - Number of lawsuits and amounts spent on health judicialization in the state of Goiás in 2021 (Source: Secretary of State for Health – SES/GO)

**Source:** The author

The authors, quoting Oliveira (2021), say that cooperation is needed among authorities, professionals, health bodies and companies in the field, to reconcile a thoughtful path. The aim is for health management not to suffer excessive interference or exorbitant spending, and for citizens to be able to enjoy the pillars of the Unified System, which are universality, comprehensiveness and equity.

Published in the Electronic Scientific Journal of Applied Sciences of FAIT, entitled The (In)Effectiveness of the Judicialization of Health for the Supply of High-Cost Medicines, this text analyzes the obstacles to guaranteeing high-cost medicines and the consequent judicialization when they are not complied with.

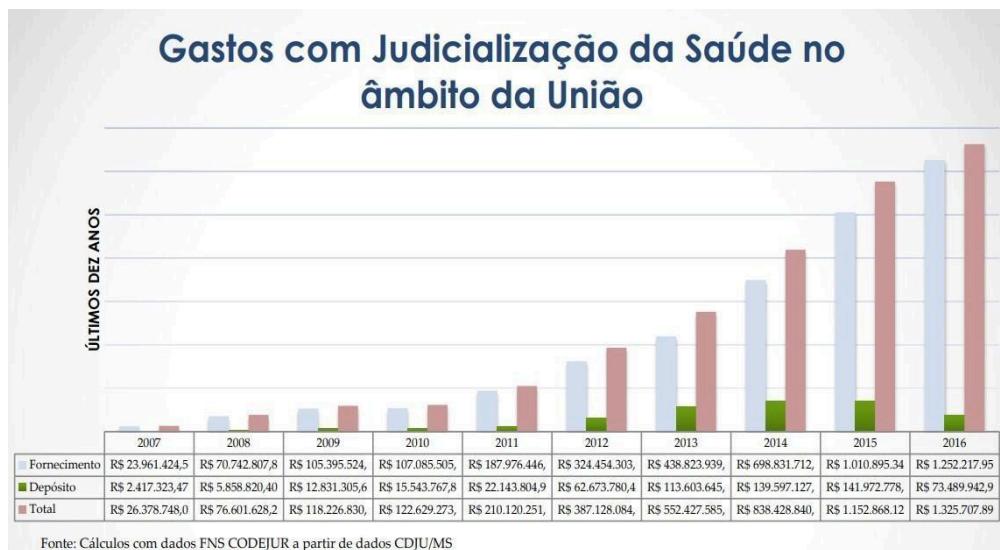
The deficiency in the supply of certain medicines increases spending and jeopardizes the funds earmarked for the realization of this right, as there is an irregularity in the homogeneous distribution of the medicine. The authors conclude that the list of medicines

provided by the SUS should be increased, as this will reduce the number of medicines available and reduce costs.

A study carried out by the TCU, entitled: “Public spending on the judicialization of health increases”, reports that the financial management of lawsuits has increased by 1,300% in seven years, which is equivalent to 80%, won through legal actions. The oldest data, from 2015, shows that the total amount allocated to fulfilling the sentences reached one billion reais. The work of the State Prosecution and other bodies in the three branches of government to reduce the negative effects on budgets and user access was investigated.

No longer in scientific articles, but in a booklet published by the Federal Government, the expenditure on the judicialization of health was highlighted in figures, which encourages an out-of-control budget. Entitled: “Judicialization of Health within the scope of the Union in numbers: Extraordinary Appeals 566471 and 657718, produced in 2017, there is no other more updated”. See graph below:

**Picture 05 - Public spending - update to 2016.**



**Spending on the Judicialization of Health within the scope of the Union**

It was revealed that in a ten-year period there was a 5,000% increase in spending in this area, which highlights that lawsuits consume millions from the public coffers, but benefit only a small portion of the population, as shown in the graph below. At the same time, the National Council of Justice, through its news agency, used data from the Federal Court of Auditors to delineate this disparity between the excess of lawsuits and spending.

An opinion by Federal Judge Clenio Jair Schulze, coordinator of the Health Management Committee of the Court of Justice of the state of Santa Catarina (TJSC), said that this judicialization has become a very lucrative business.

In the opinion of the judge, Brazil has an inadequate interpretation that judges should be held hostage to medical acts, in the sense of absolutely observing the prescriptions of these professionals. What's more, in the view of the judge, it is the municipalities that have come to bear the entire financial burden of these claims. Graph below shows figures provided by the TCU.

Picture 06 - Spending – data TCU.



Higher state spending on health judicialization

2014

State of Minas Gerais + State of Santa Catarina + State of São Paulo = R\$ 772

R\$ 221.020.083,00      R\$ 156.957.764,20      R\$ 394.468.176,76 million

state spending on health judicialization

Ministry of Health = R\$ 700 million

The TCU reveals, as seen above, that until 2017 spending on medicines came from those not registered, but judicialized, mainly in the states of São Paulo, Rio Grande do Sul and Minas Gerais.

In the newspaper “O Popular” (The Popular), an article from 2022 reported data on the costs of judicialization in the state of Goiás. Since 2013, more than 3,521 cases have

been standardized by the SUS, so the cost of paying for compliance with lawsuits has been exorbitant.

Along the same lines of research, the National Council of Justice, in its Health Economics Newsletter - Judicialization in public and private health, has made health procedural data available on its portal. See the picture below:

**Picture 07 - Statistics – CNJ.**



Fonte: <https://paineisanalytics.cnj.jus.br/single/?appid=a6dfbee4-bcad-4861-98ea-4b5183e29247&sheet=87ff247a-22e0-4a66-ae83-24fa5d92175a&opt=ctxmenu,curssel>, acesso em 13/11/2022.

## Procedural Statistics on the Right to Health

The picture shows that there have already been more than 268,000 lawsuits related to healthcare, filed in 2022 alone, 65% of which are against the SUS, which requires public spending to provide these medicines.

## CONCLUSION

With the increase in lawsuits over medicines and healthcare in Brazil, a number of scientific articles and reports have discussed the consequences of this substantial immersion over the years.

In all the studies carried out, it was noted that there is a backlog of requests for medicines, even medicines that have not yet been authorized by Anvisa for distribution and marketing, but which are the target of lawsuits because they are prescribed by health professionals. In view of this, there is almost unanimous agreement on the extent to which there is an increase in spending for this reason, preventing investment in other areas of

public health.

Another aspect also pointed out is the fragility of the public policies implemented to supply these high-cost medicines, which could prevent the large number of cases filed with the Brazilian Judiciary. Thus, it can be concluded that there is a mismatch and conflict between the fundamental right to health and the structuring of services to make it effective.

From reading and discussing the articles and reports, it is clear that there are structural and logistical flaws in the provision of health care, and this generates expenses, financial disruption and often goes beyond the barriers of the budget law. In other words, the Federal Constitution grants the right, but excessive spending takes it away, because with the payments of countless sentences there is no way to improve care, surgery and so many other necessary and non-existent benefits.

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