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**JUDICIALIZATION IN A MEDICAL WORK COOPERATIVE OF BRAZIL**

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**ABSTRACT:** this study analyzes 84 cases of litigation involving users brought against medical work cooperative - Unimed Leste Paulista (ULP) in the period of 3 years (2014, 2015 and 2016). The processes were subjected to an instrument with 58 questions divided into three areas: 1. process-specific Variables, 2. medical scientific Variables, 3. financial Variables. All tabulated data were subjected to statistical analysis and costs facing official ULP balances vis-à-vis the National Health Agency-Brazil (ANS). The vast majority of the demands were central focus the debate of contracts between the parties (78 cases or 93%), breach of contract was requested in 62 direct actions (or 80%), and in all cases, was upheld or partially upheld (100%) in first instance. Spending on assistance costs totaling judicialization, internal and external legal assistance exceeds the value of 2,700,000 .00 R\$ in 3 years, with a mean of R \$33,000.00 (or about \$10,000) with each case. In addition to the required treatments costs outside of contractual scopes also found itself dismissed out of official lists of procedures provided for in the procedures list ANS: regulatory agency Health sector. The total costs with judicialization make up about 1% of all health care cost of all assisted by the ULP cases in those periods. The impact of judicialization costs in a cooperative of Brazil are relevant and generally resulting from breach of contract between part and treatments that are not listed on official lists of previously agreed procedures. Situation not provided for in current actuarial calculations; situation that delineates the perception of nonconformity; and should be best confronted.

**Keywords:** Judicialization of health, Public polices, lawsuits of health, Physishian Cooperativism, Human Development

**INTRODUCTION**

The intermediation of the judiciary, increasingly present in fulfillment of rights requirement in public health demands, come to question the real already prefectures Justice of these demands (MEINEN, e.; GAUDIO, R.; 2015).



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In the environment of health supplements, we observe the closure of 20 cooperative activities of medical work in Brazil's UNIMED system between 2012 and 2017 (UNIMED Brazil; Official website). Health care and medical care in general have always been expensive for families, individuals and society. With the technological advances of medical services, orthotics and prosthetics, robotic surgery, collective massive immunizations, urgent and emergency services with multidisciplinary teams in attendance of 12 or 24 hours daily. It is accepted worldwide that "medicine is a very expensive" (KONGSTVEDT, PLOCHER, 1998) and with the increased longevity will be costlier. As a nation, Brazil has chosen a Constitution guaranteeing the right to health as a duty of the State (FEDERAL CONSTITUTION, 1988).

The debate between the ethics of individual right on the law in cases of collective prefectures is already post. In the case of cooperatives of medical work when the individual right of the user has been outlined in previous contractual parameters, and was broken in court later, it is the confrontation of ideas under discussion of rights embodied in the matter. In the case of demands the health plans in general it is estimated that the major costs to focus on cancer cases due to need for high complexity and multidisciplinary, which of course makes the whole treatment, especially when not referred to earlier (Structuring of Health Legislation). And it is also acceptable to the sense of disorientation and confusion in the patient who receives a troubling diagnosis; seek solutions in judicial arbitration.

A worrying crisis in the Health sector with focus on the judicialization of health which covers working cooperatives doctor outlined that deserves to be studied (SCHEFFER, M.C. 2014). In the last five years, between 2012 and 2017, closed its activities in Brazil 20 cooperatives doctor only in Brazil's UNIMED system, according to data from the cooperative itself and of the NSA.

The unique Cooperative in question operates in 11 cities in the macro-region of Campinas and region of São João da Boa Vista, answering users and coordinates the work of 278 doctors cooperated.

## METHOD

This is a retrospective, cross-sectional study of documentary character. The research aims to review all judicial proceedings instituted whose required is the medical work cooperative: Unimed East Paulista (ULP), in a period of 3 years (1 January 2014 to 31 December 2016).



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Inclusion criteria: every individual or collective lawsuits from users of ULP, which required is the ULP with or without shared responsibility in action.

Exclusion criteria: individual or collective lawsuits from users of ULP, which required is the ULP, in whose responsibility to bear the burden of action is another paying source.

The variables were investigated through modified instrument (BARTOLOMEI, 2015), that after submission the assessment by teams of professionals for each field approached; namely, the main elements of the process were assessed by the lawyer of the ULP, physician-scientific elements submitted to analysis of the auditor, the Superintendent of ULP; and finally, the financial elements were submitted to analysis of the administrator and controller of ULP.

86 cases had been raised in these 3 years, being 2 with exclusion criteria due responsibility of payment does not match the ULP.

The 84 cases were submitted to the questionnaire and the variables investigated 58, distributed in 3 areas to meet the specific objectives:

1. Main elements of the legal process
2. Main elements médico-científicos
3. Main financial elements

The study material consisted of copies of lawsuits relating to claims in the face of the ULP in 2014, 2015 and 2016. These copies of court proceedings are legal Department of ULP. The lawsuits are filed and kept in extinct physical files by number and name of the author. Court proceedings of medical treatment are registered in the Legal Department of ULP and are stored in physical files, identified by civil process, are also stored in electronic file in chronological sequence of input actions that involve the ULP, in numerical order and also by names, respected the input sequence of actions in the Legal Department of ULP. Legal material was handled by responsible lawyer.

Another review will be in the amounts of costs of each case, that is, the detailing of the expenses incurred as a result of that demand and how these amounts impacted on performance of the cooperative.

The annual reports of the officers of the cooperative are swings in its own headquarters in São João da Boa Vista, but can also be consulted via digital through annual publication officer vis-à-vis the ANS. are therefore in the public domain. The data was tabulated in Excel program and later related to generate the corresponding data.

The data were collected by the researcher, with the assistance of professionals in the areas corresponding to better matching of the data; that is, data on court cases were collected in conjunction with the lawyer of the company; The medical scientific data were



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collected in conjunction with the Ombudsman, and audit supervision and financial data were collected in conjunction with the controller and the administrator of the cooperative.

The survey was conducted in physical and electronic files of ULP which concentrate all accounts of 11 cities in the area covered by the cooperative.

Thereby covered variables concerning the type of action, the plaintiff's characterization, time for compliance with the decision, requirement of medical report, anticipation, and in the other instrument budget, budget revenues to pay for the treatment, expenses and origin of resources each year, previous service in the Ombudsman's Office and medical audit, number of attendances, referral to another city, previously proposed treatments, hospitalizations, previous contact with the oversight or representatives of ULP before the demand.

It is important to mention that the research respected the mains of the 466/2012 resolution of the National Council of health and were guaranteed to privacy of the confidentiality of the names of the patient lawsuits, as well as any data that might relate them to State and situations private health.

## RESULTS

Due to large amount of relevant information we chose presentation in tables with frequency and percentage:

**Table 1.** Frequency and percentage of elements of the legal process

	Frequency	Percentage
2014, 2015 and 2016	84	100.0%
2014	24	28.5%
2015	28	33.3%
2016	32	38.0%
<b>STATUS OF PROCEEDINGS</b>	84	100%
Completed	45	53.6%
In progress	39	46.4%
<b>TIME TO SENTENCE ON first INSTANCE</b>	84	100.0%
Up to 1 year	61	72.6%



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Up to 6 months	34	40.5%
From 13 to 24 months	10	11.9%
Over 24 months	5	5.9%
In progress	8	9.5%
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<b>RESULT</b>		
<b>In the first INSTANCE</b>	75	100%
Well founded	42	56%
Partial proceeds	15	20%
Unfounded	11	14.7%
Agreement	6	8%
Abandonment	1	1.3%
<hr/>		
<b>TIME OF SENTENCE TO second INSTANCE</b>	43	100.0%
Less than 6 months	10	11.9%
From 6 to 12 months	14	16.7%
More than 12 months	2	2.4%
In progress	17	20.2%
<hr/>		
<b>TIME GIVEN BY THE JUDGE TO COMPLY WITH SENTENCE UNDER SUPERVISION</b>		
Immediately	20	23.8%
Up to 7 days	12	14.3%
From 8 to 14 days	23	27.4%
Of 15 to 30 days	5	5.9%
Indeterminate or not in	24	28.6%
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<b>GENRE OF THE INTERESTED BY DECISION</b>		
Female	40	47.6%
Male	36	42.9%
Couple	4	4.8%



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Company	4	4.8%
<b>AGE OF THE PERSON CONCERNED BY DECISION</b>		
Up to 17 Years	10	11.9%
18 to 25 Years	4	4.7%
26 to 40 Years	17	20.2%
41 to 59 Years	11	13.1%
60 to 79 Years	28	33.3%
80 Years or more	2	2.4%
There Was No	4	4.7%
<b>REPRESENTATIVE COOL</b>		
	19	100%
Gender		
Female	16	84.2%
Male	3	15.8%
Age		
From 26 to 40 years	5	26.3%
Of the 59 41 years	8	42.1%
60 years or more	6	31.6%
<b>EXISTENCE OF MEDICAL REPORT</b>		
	84	100%
Yes	62	73.8%
No	22	26.2%
<b>REQUEST FOR SECOND OPINION DOCTOR</b>		
	<b>84</b>	100%
Medical cooperative	7	8.3%
Applicant	0	0.0%
Judge	0	0.0%
<b>CLASSIFICATION THE ACTION OF KNOWLEDGE</b>		
	84	100%



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Obligation to make	59	70.2%
Damning	21	25.0%
Declaratory	4	4.8%
<b>PLAINTIFF</b>	84	100%
Particular	80	95.2%
Company	3	3.6%
Public Ministry	1	1.2%
<b>LEGAL REPRESENTATIVE</b>	84	100%
Private lawyer	78	92.9%
Public assistance	5	5.9%
Public Ministry	1	1.2%
<b>AUTHOR WITH GRATUITY OF JUSTICE</b>	84	100%
Yes	71	84.5%
No	13	15.5%
<b>INTERLOCUTORY DECISION</b>	59	100%
Type of decision		
With anticipation of guardianship	44	74.6%
Result		
Acceptance	47	79.7%
Rejection	12	20.3%

Source: Archives of Legal Processes against ULP (2014, 2015, 2016).

Within the Medical-scientific field, we analyze more deeply the 59 demands of medical treatment; and the 25 of high complexity. In some items we feel best relate to the total number of cases, so we reference each item with what we consider the benchmark of 100%.



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**Table 2.** Frequency and percentage of main elements physician-scientific

	Frequency	Percentage
<b>ORIGIN OF MEDICAL ASSISTANCE REQUEST</b>	59	100%
Doctor cooperated	28	47.5%
Doctor accredited	4	6.7%
Private doctor	21	35.6%
There was no	4	6.7%
Public service	4	6.7%
<b>PLACE OF PERFORMANCE OF THE TREATMENT</b>	59	100%
Particular	26	44.1%
SUS	3	5.1%
ULP/action Area	24	40.7%
Unimed Accredited	7	11.9%
<b>PLACE OF EXECUTION OF THE HIGH COMPLEXITY</b>	25	100%
Private Clinic	7	28%
SUS	1	4%
ULP/Network	13	52%
Unimed Accredited	4	4%
<b>EVALUATION OF MEDICAL AUDIT</b>	84	100%
Risk of life		
No	37	44.0%
Not in	44	52.4%
Yes	3	3.6%
Risk of permanent damage		
No	36	42.9%
Not in	45	53.6%
Yes	3	3.6%
<b>THERE was NO second opinion MEDICAL AUDIT</b>	84	100%
No	58	69.1%
Not in	19	22.6%





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Yes	7	8.3%
<b>PROCEDURE AGAINST INDICATED FOR HIS DOCTOR</b>		
No	61	72.6%
Not in	15	17.9%
Yes	8	9.5%
<b>NUMBER OF ATTENDANCES IN THE MEDICAL AUDIT</b>		
2 to 5	10	11.9%
There was no	49	58.3%
1	25	29.8%
<b>ATTEMPTED NEGOTIATION BY ULP AUDIT</b>		
No	72	85.7%
Yes	12	14.3%
<b>MONITORING THE TREATMENT BY MEDICAL AUDIT</b>		
No	82	97.6%
Yes	2	2.4%
<b>DEMAND CONSIDERED PERTINENT BY THE MEDICAL AUDIT</b>		
No	47	55.9%
Not in	34	40.5%
Yes	3	3.6%
<b>ATTENDANCE IN THE OMBUDSMAN'S OFFICE</b>		
No	71	84.5%
Not in	4	4.8%
Yes	9	10.7%
<b>NUMBER OF ATTENDANCES IN THE OMBUDSMAN'S OFFICE</b>		
	84	100%



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1	8	9.5%
2 to 5	1	1.2%
There was no	75	89.3%
<hr/>		
Ombudsman referred for action		
No	77	91.7%
Yes	7	8.3%
<hr/>		
<b>MONITORING OF TREATMENT</b>	84	100%
The Ombudsman Service		
No	82	97.6%
Yes	2	2.4%
<hr/>		
By the supervision and audit		
No	71	84.5%
Yes	13	15.5%
<hr/>		
<b>MEDICAL AUDIT NAME</b>	84	100%
No	59	70.2%
Yes	25	29.8%
<hr/>		
<b>BELONGS TO THE LIST OF PROCEDURES-ANS</b>	84	100%
No	32	46.4%
Yes	31	44.9%
If not for the LIST	6	8.7%
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<b>REQUEST BELONGS TO THE CONTRACT</b>	84	100%
Contractual focus	78	92.8%
No: breach of contract	62	79.5%
Upheld or partially upheld	62	100.0%
Yes	16	20.5%
Unrelated	6	7.2%
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<b>ATTEMPTED NEGOTIATION BY OMBUDSMAN</b>	84	100%
No	65	77.4%
Yes	19	22.6%
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<b>LATER FEATURE BY ULP</b>	84	100%
No	39	46.5%
Not in	5	5.9%
Yes	40	47.6%
<b>SECOND MEDICAL OPINION</b>		
Cases of health	60	71.4%
Second opinion	2	3.3%
Administrative cases	24	28.6%
<b>CANCER CASES</b>		
Well-founded and PP	10	100%
Unfounded	7	70%
Agreement or in progress	1	10%
	2	20%
<b>NATURE OF THE CASE</b>		
Medical treatment request	57	100%
Treatment request origin		
Cooperated Doctor	28	49.1%
Private doctor	21	36.9%
Accredited Physician	4	7.0%
Public Service//Jack	1	1.8%
Indemnification of treatments	3	5.3%
Treatment of other areas of health	3	5.3%
Administrative	24	42.1%

Source: Archives of Legal Processes against ULP (2014, 2015.2016)

**Table 3.** Frequency and percentage of financial Elements

	Frequency	Percentage
<b>TREATMENT COSTS</b>		
Given time (Healthcare Cost)		
Up to R\$1,000	3	3.6%
R\$1,001 to R\$5,000	10	11.9%
R\$10,001 to	16	19.0%
R\$50,000		



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R\$200,001 to R\$500,000	1	1.2%
R\$5,001 to R\$10,000	5	5.9%
R\$50,001 to R\$100,000	6	7.2%
There was no	43	51.2%
<hr/>		
An indefinite period (assistive Cost/per year)		
Over R\$ 100,000	4	4.8%
There was no	70	83.3%
R\$1,001 to R\$5,000	1	1.2%
R\$10,001 to \$50,000	6	7.1%
R\$50,001 to R\$100,000	3	3.6%
<hr/>		
Indirect Cost Assistance		
Above R\$50,000	3	3.6%
Up to R\$1,000	3	3.6%
R\$10,001 to R\$50,000	3	3.6%
R\$5,001 to R\$10,000	6	7.1%
There was no	69	82.1%
<hr/>		
Origin of indirect cost assistance		
Damages/Indemnity	10	11.9%
Other	8	9.6%
There was no	66	78.5%
<hr/>		
<b>THERE WAS A NEED FOR TECHNICAL PROVISION</b>	84	100%
No	75	89.3%
Yes	9	10.7%
<hr/>		
Judicial deposit for the case		
No	71	84.5%
Yes	13	15.5%
<hr/>		
Financial report for the case		
No	63	75.0%
Yes	21	25.0%
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**THERE WAS NO REPORT  
IN CASE OF ASSEMBLY  
MEMBERS**

No	64	76.2%
Yes	20	23.8%

Source: Archive of legal Processes against ULP (2014.2015 and 2016)

Table 4. Detail of the cancer cases, assistance and legal costs

Cancer cases	Assistance costs	Costs Legal	Result of first instance	Detail
Case 1	R\$ 122,400.00	(2016) R\$9,802.00	In progress	Home-care
Case 2	R\$ 68,680.00	(2015) R\$8,615.00	Well founded	Chemotherapy
Case 3	R\$ 20,800.00	(2015) R\$8,615.00	Partially upheld	ICU Grace period
Case 4	R\$ 65,679.00	(2015) R\$8,615.00	Partially upheld	Compensation R\$300,000.00
Case 5	R\$ 18,000.00 per year	(2015) R\$8,615.00	Agreement	Oxygentherapy home
Case 6	R\$ 23,000.00	(2014) R\$13,050.00	Well founded	Private surgery
Case 7	R\$ 42,881.00	(2014) R\$13,050.00	Well founded	PET-CT and moral damage
Case 8	R\$ 60,172.00	(2014) R\$13,050.00	Partially upheld	Compensation R\$334,000.00
Case 9	R\$ 28,000.00	(2014) R\$13,050.00	Partially upheld	RT particular moral damage denied
Case 10	-----	(2014) R\$13,050.00	unfounded	Private hospital Surgery
<b>TOTAL</b>	R\$ 449,612.00	R\$ 109,512.00		
<b>Average total cost of cancer cases: R\$55,912.40</b>				



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**Table 5:** List of demands non NSA procedures list in force at the time with Sentence in First Instance

Result of the Sentence in First Instance	List of procedures	
	Does Not Belong To ROL-ANS	Belongs to ROL-ANS
Agreement	3	1
Cancellation/Abandonment	0	0
Unfounded	3	5
There was no	1	6
Partially upheld	2	10
Well founded	23	9
<b>Total: 32 cases of non-demands Rol-ANS</b>	25 cases (78% P or PP)	19 cases (61% P or PP)

**Table 6.** Isolated and total Costs per year of Judicialization

	YEAR			TOTAL
	2014	2015	2016	
<b>HEALTH CARE COST</b>	R\$ 600,879.94	R\$ 581,621.22	R\$ 701,816.39	R\$ 1,884,317.55
<b>COST ARSE. OWN LEGAL</b>	R\$ 212,930.39	R\$ 141,202.86	R\$ 153,645.00	R\$ 507,778.25
<b>COST. EXTERNAL LEGAL</b>	R\$ 100,260.34	R\$ 100,006.60	R\$ 161,778.14	R\$ 362,045.08
<b>TOTAL OF JUDICIALIZATION</b>	R\$ 914,070.67	R\$ 822,830.68	R\$ 1,017,239.53	R\$ 2,754,140.88

Source: legal Processes, annual balance sheets, expenses Sectorized ULP.



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**Table 7.** Statement of the costs of the judicialization of legal work and cases

	YEAR		
	2014	2015	2016
<b>ANNUAL COST OF JUDICIALIZATION</b>	R\$ 914,070.67	R\$ 822,830.68	R\$ 1,017,239.53
<b>TOTAL LEGAL COST JUDICIALIZATION COSTS PER CASE</b>	R \$313,190.74	R\$ 241,209.46	R\$ 315,423.42
<b>LEGAL COSTS FOR THE CASE</b>	R\$ 38,086.28	R\$ 29,386.81	R\$ 31,788.74
	R\$ 13,049.61	R\$ 8,614.62	R\$ 9,862.98

The cost per case judicialized: R \$33,087.28

**Table 8.** Total Frequency and percentages of cases divided by year, of the status and costs of judicialization

	YEAR		
	2014	2015	2016
<b>PROCESSES</b>	24 cases	28 cases	32 cases
Total: 84 cases (100%)	(28.6%)	(33.3%)	(38.1%)
<b>STATUS OF PROCEEDINGS</b>	Completed: 17 (70.8%)	Completed: 15 (53.8%)	Completed: 13 (40.0%)
	In progress: 7 (29.2%)	In progress: 13 (46.4%)	In progress: 19 (60.0%)
<b>ANNUAL COST OF JUDICIALIZATION</b>	R\$ 914,070.67	R\$ 822,830.68	R\$ 1,017,239.53

**Table 9.** Total cost of related Care cost total judicialization and gross expenses per year.

	Year		
	2014	2015	2016
<b>TOTAL COST OF JUDICIALIZATION</b>	R\$ 914,070.67	R\$ 822,830.68	R\$ 1,017,239.53



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<b>TOTAL HEALTHCARE COST</b>	R\$ 74,915,879.36	R\$ 86,430,312.28	R\$ 99,101,838.45
<b>GROSS EXPENDITURE</b>	R\$ 114,693,813.15	R\$ 129,301,639.49	R\$ 146,086,173.97
<b>Interface: JUDICIALIZATION/ HEALTH CARE COST</b>	0.012 (or 1.2%)	0.0095 (or 0.95%)	0.0103 (or 1.03%)

Source: lawsuits 2014.2015 2015, swings and ULP.

## CONCLUSIONS AND DISCUSSION:

Court proceedings are lengthy, even though health cases, 46% of the cases are still in progress, being resolved in the first instance in up to 1 year in 72%, even with 8% of agreements. Resorted to the second instance in 43 cases (or 51.2%). In all cases, 75% showed interlocutory decisions, of which 75% with advance request of tutelage of which 80% deferred; 23% of the total with injunctions for fulfil immediate; acceptable situation in life and risks or permanent injury. The claimants generally dominated by women (52%) individual age group 60 to 79 years predominantly (33%).

The 19 cases with legal representative (or 23% of the total) were usually represented by women (84.2%) between 25 and 59 years (68%); the mothers of minors are generally legal representatives having chaos also elderly parents represented by their children outnumbered, only 3 cases.

We started the research with the perception that the motivation for the litigation based on acceptable disorientation of the patient who receives a cancer diagnosis and refers to the authority of the State to which the health plan provides the provision that the applicant thinks is right and you're not would be reaching. From the human point of view regarding with a diagnosis often devastating, would be acceptable to a disorientation of the users. But we finished the survey with data confirming the incidence of only 10 cancer cases (12% of the total) that have more onerous than average of cases in General (R\$ 55,912.40, while the overall average was R\$ 33,087.28) and larger presence of administrative cases discuss adjustments (24 or 29% of total cases); and especially the great motivation of focusing on contract demands, especially the breach of contracts between the parties and that are declared unfounded or partially from on trial (focus on contract: 78 cases or 93%; breach of contract: 62 cases or 80% of the total, judged unfounded or partially founded in 100%).





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As for the list of NSA Procedures, standard Health sector equated, 32 demands (or 46% of the total) were of procedures that were not reflected these standards and were judged From or partially from in 25 cases (or 78% of the cases outside the Rol-ANS).

Within the knowledge of the actuarial calculations, when they are calculated values to be collected from users, these calculations from the inherent risks and corresponding values of each activity; We can assume that these calculations are unbalanced because they are marked out by contracts to provide medical and health services, as well as must be equivalent to those of standards ANS bounded by the list of procedures-ANS; both parameters mostly disregarded by judges in the first instance. Is faced with a disagreement between the existing parameters, which demand new approaches to public policy and new directions in this sector in question.

The tabulations allow numerous comments that we consider less relevant but which the reader can easily finish.

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