

Revista de  
**Direito Econômico e  
Socioambiental**

ISSN 2179-8214

Licenciado sob uma Licença Creative Commons



# **REVISTA DE DIREITO ECONÔMICO E SOCIOAMBIENTAL**

vol. 6 | n. 2 | julho/dezembro 2015 | ISSN 2179-8214

Periodicidade semestral | [www.pucpr.br/direitoeconomico](http://www.pucpr.br/direitoeconomico)

Curitiba | Programa de Pós-Graduação em Direito da PUCPR



## **Social development and private health care system: three ways for success**

### *Desenvolvimento social e saúde privada: três caminhos para o SUCESSO*

**Kristian Rodrigo Pscheidt<sup>1</sup>**

Universidade Presbiteriana Mackenzie

Recebido: 24/04/2015  
Received: 24/04/2015

Aprovado: 30/07/2015  
Approved: 30/07/2015

#### **Abstract**

A deep analysis in the Brazilian health care system shows how Government depends from private companies. State has the Constitutional duty to implement and develop the health care system, but its goal only is possible if Interact with the private sector. In this way, there are three ways for success: increase tax incentives, adopt an information economics and recognize health as a scarce resource. In fact, nowadays, private sector are assuming a duty

Como citar este artigo/How to cite this article: PSCHIEDT, Kristian Rodrigo. Social development and private health care system: three ways for success. **Revista de Direito Econômico e Socioambiental**, Curitiba, v. 6, n. 2, p. 29-49, jul./dez. 2015. doi: <http://dx.doi.org/10.7213/rev.dir.econ.socioambienta.06.002.A002>

<sup>1</sup> Doutorando na Universidade Presbiteriana Mackenzie (São Paulo-SP, Brasil). Professor da Universidade Tuiuti do Paraná. Professor da Faculdade Cenetista de Campo Largo. Mestre em Direito Político e Econômico na Universidade Presbiteriana Mackenzie. Especialista em em Direito de Negócios pelo Centro Universitário das Faculdades Metropolitanas Unidas. Especialista em Direito Tributário pelo Centro Universitário Curitiba – UNICURITIBA. Graduado em Direito pela Pontifícia Universidade Católica do Paraná. Graduado em Jornalismo pela Pontifícia Universidade Católica do Paraná. E-mail: kristian\_adv@hotmail.com

without a public incentive policy, and it may impact in the sustainability of all health care system, as for private as for Government.

**Keywords:** health care system; sustainability; scarce resource; tax incentives; information economics.

### **Resumo**

*Uma análise profunda do sistema de saúde brasileiro mostra como o Governo depende das empresas privadas. O Estado tem o dever constitucional de implementar e desenvolver o sistema de saúde, mas esse objetivo somente é possível se houver interação com o setor privado. Neste sentido, existem três caminhos para o sucesso: aumentar os incentivos fiscais, adotar uma economia da informação e reconhecer a saúde como um recurso escasso. De fato, hoje, o setor privado está assumindo um dever sem uma política pública de incentivos, e isso pode impactar na sustentabilidade de todo o sistema, tanto para as empresas quanto para o Governo.*

**Palavras-chave:** sistema de saúde; sustentabilidade; recursos escassos; incentivos fiscais; economia da informação.

---

## **1. Introdução**

A whole health care system in Brazil depends from the interaction between public and private sector. Constitutional duties and goals, as universal and free treatment for all people, requires that the private sector accepts his position and finance all demand from those that can pay for it<sup>2</sup>. This relation is clear in the Law n. 9.656/1998 and the creation of a public agency named ANS (Agência Nacional de Saúde Suplementar or, in a free translation, Nacional Health Agency), with the purpose to attribute to the private sector a full package of responsibilities for their consumers. In consequence, it intends to unburden the public system, always thinking in the Constitutional rules. So, because of the public interest in the sector, the private sector, especially the health insurance, suffers a hard regulation that makes unique<sup>3</sup>.

---

<sup>2</sup> It is important to note that the private health care system in Brazil includes even the direct providers (hospitals, clinics, doctors and laboratories - pharmaceutical or biomedical), and also the health insurance companies.

<sup>3</sup> What is evident is that the sector "is under strict observance of control and/or planning of the Government [...] which characterizes the contract dirigisme", according Leonardo Vizeu Figueiredo (2006, p. 34).

Health is a scarce resource, with high costs and has an important position for all society, "resulting that this market has a different behavior than the others", recognizes the Brazilian Federal Health Department (BRASIL, 2012, p. 7). There are several factors that make it unique, like its public interest, irregular and unpredictable demand, carried by asymmetric information, the costs for training doctors and nurses, the high technology equipment, and license taxes for class representation.

Increase the health care system in Brazil, like impose ANS shows the necessity to converge the private and public sectors, both aligned with social and economic rules disposed in articles 6º and 170º from Brazilian Constitution. However, this partnership must be coordinated to be successful, because private sector needs to keep in mind his profitable focus. Risi Junior e Nogueira (2002, p. 222) explains that "although the health policies have the possibility of extending benefits to population groups previously excluded, it is essential that actions are coordinated with other public policies".

Thus, this particular feature from private sector, acting also to keep a favorable economic conditions, infects the supreme principle of equality that teach that the inequality must be treated in a unequal way. About this lesson, dragged out from philosophy, Chaim Perelman translates equality into a six forms of justice. This principle is well explained by Celso Antonio Bandeira de Mello (2010, p. 18), advertising that the equality principle grants the impossibility of the legal order create unjustified and unreasonable discrimination<sup>4</sup>.

Therefore, in the exactly moment that the State, with its public policy, intends to impute legal duties for the private health care system because its public interests, providing always a wide and integral treatment for the consumers, National Health Agency must allow the financial breath and exempt the health insurance companies from some taxes<sup>5</sup>. Do not

---

<sup>4</sup> Therefore sets out three criteria to achieve recommended by the legislature, namely: a) desigualação factor; b) logical correlation between the erected factor in criteria descrímen and established disparity in diverse legal treatment; c) line of this logic correlation with the interests absorbed in the constitutional system and juridicizados Thus. Evolving these ideas, Humberto Ávila (2009, p. 194) consolidated the three equal conceptions: a) postulated, that is, as metanorma application other; b) principle, as the search for an ideal state of equality; c) rule, or standard material that pre-exclude matters within the competence of the legislative branch. Complete the author, with these premises, that "equality is assured only if the law, and uniformly applied, is isonomic in its content".

<sup>5</sup> In the context of Humberto Ávila (2009, p. 197), "the extrafiscal purposes, in tax law, do not have the supporting power itself, to the point to justify your term to waive the adduction of the general justification for unequal treatment of taxpayers. "

recognize the different aspects are the first element that shows an incorrect policy, because scarce resources are wrongly used. Equality principle must be always enforced in normal ways, and ignore this is the same to act in against Constitution.

Private health care system needs a policy that must consider and apply these particular and unique technical features to optimize the resources and ensure its sustainability. However, do all the institutional groups want this working well? It is assured that an efficient and optimized health system is a political choice as well<sup>6</sup>, and the human rights must take into account, especially because “legal system is a particular way of politics” (AN-DRADE, 2006, p. 65) working likes imposition, concretion, control, discussion and review of the policy.

Regulation Theory recognizes the force of these institutional groups which George Stigler (1967, p. 1) defined that arise when a person is another agent; and the agent does not plan all the consequences of their actions<sup>7</sup>. Interest groups<sup>8</sup> put the screws on State to obtain favorable political results, keeping the market and the class distinction,<sup>9</sup> manipulating, basically, the three primary structures: finance the political system, create new lines to explore and, lastly, face the legislative and executive acts in Courts<sup>10</sup>.

---

<sup>6</sup> According Sam Peltzman (1989, p. 1), “what has come to be called the economic theory of regulation, or ET, began with an article by George Stigler in 1971. The most important element of this theory is its integration of the analysis of political behavior with the larger body of economic analysis. Politicians, like the rest of us, are presumed to be self-interested maximizers. This means that interest groups can influence the outcome of the regulatory process by providing financial or other support to politicians or regulators”.

<sup>7</sup> George Stigler (1972, p. 98) in other issue shows the relations between politics and economics when “exclusivity of public policies does not create a basic difference between political and economic competition”.

<sup>8</sup> An interesting concept: “any group that, on the basis of one or several shared attitudes, makes certain claims upon other groups in society for the establishment, maintenance or enhancement of forms of behavior, that are implied by shared attitudes”. (TRUMAN, 1951, p. 33);

<sup>9</sup> John and Rui Figueiredo (2002, p. 177) shows us that “in particular, we demonstrate that (1) as the court’s reversion point becomes more extreme, the transfer made in the lobbying stage will be smaller; (2) as the endowed interest group’s resources increase, the transfers are higher and the outcome of the lobbying stage is closer to its ideal point; (3) as the underlying probability that the court will overturn the decision increases, the transfers to the regulator decreases, and therefore lobbying outcomes are driven toward non-results—which may eliminate lobbying altogether; and (4) as the responsiveness of the court to resources changes, the effect it has on lobbying will depend upon the ideology of the court”.

<sup>10</sup> Figueiredo (2002, p. 161-162), tells us about lobby, explaining that “the rational choice of the literature outlines two primary mechanisms interest groups have in the lobbying process. First, groups ‘buy policy’ through some form of resources transfer. Second groups lobby policymakers by providing information so that policymakers can ensure the policy they choose is close to their own preferences

All these externalities integrate a fragmented society where the durability of the national institutions is linked with a global adjustment and coherent system that assure a strong economic growth<sup>11</sup>. Nevertheless, in the health system, public policies must be consistent with the market and, in the same time, with the social rights<sup>12</sup>. Brazil must pay up itself, “but the fundamental question is whether the payment will occur as from national objectives or not”, concludes Gilberto Bercovici (2005, p. 66).

ANS acts like a tool to enlarge the extent of the responsibilities of the private health sector, coordinating to the public system; but smother in the same time because do not recognize, in an effective way, its distinction. So, without ignoring the strength of the market and its necessary existence, the state's role on the private health system is align it to a sustainable development.

This article agrees that sustainability in the sector will be effective only if the public policies recognize the unique conditions from private health care system, particularly the health insurance companies, composing the entire segment under three essential principles<sup>13</sup>: a) the redistributive function, b) the diffusion of information economics and c) encouraging cooperation. First one induces that the regulatory scope must be redirected for a redistributive way, obliterating the “allocative inefficiencies of the concentration of economic knowledge”, as Calixto Salomão Filho (2008, p. 50). An information society discovery its essential economic and social database, attenuating the centers of Power, while the cooperation means to eliminate the exacerbated individualism<sup>14</sup>.

---

and those of their constituents. Unfortunately, none these theories explicitly considers the effect that a posterior strategy - the opportunity for groups to challenge legislative or rulemaking policy in court – has upon the strategies employed by groups or the outcomes of legislation and rulemaking”.

<sup>11</sup> Explains Joachim Hirsch (1998, p. 16) that “this fact puts them in a situation in which they are able to establish production standards, technology, division of labor and consumption in a trans form, allowing them to make the economic potential of other countries will become a condition for its own expansion. Therefore, not only military strength, size or wealth resources are crucial to the international domination. Care, mainly the internal social and political relations and the constellation of class forces, which are crucial.”

<sup>12</sup> How emphasizes Gilberto Bercovici (2005, p. 41), “the Constitution cannot be understood in isolation, without links to social theory, history, economy, and especially the political”.

<sup>13</sup> These three ideas are based in the book of Calixto Salomão Filho (2008, p. 48-51).

<sup>14</sup> Calixto Salomão Filho (2008, p. 26) predicts that “you need to revisit the Modern State, to scrutinize the background which means, under this new approach, and what the depth of its regulatory role in underdeveloped economies. In them there seems little doubt about the need for propulsion through the development process state. It is not, however, the counter-cyclical Keynesian-type propulsion. Apt propulsion solves or minimizes the structural problems of these economies and at the same time able to spread the economic knowledge is required”.

Adapting all these ideas to the Brazilian private health care system, it is possible to draft better solutions to make an effective use of this scarce resource, considering him as a market product, but also an important tool to apply and improve social rights.

## 2. Public and private cooperation: tax incentives

An universal and free treatment for all people is the Constitutional duty of the Brazilian State and, because this, private sector cannot be forced to assume that goal. These features are not compatible for profit and broke the market logic. A solidarity health care system, with the support of the private companies, demands consideration from all society, but the State still remains with its duty. However, in the same time, private sector needs to help the Government because its social role and the investments consolidated all over the history. Here arises one challenge: how to share a responsibility from the State to the private health insurance companies, particularly because its profitable purposes?

This redistributive way approach from the discussions about justice<sup>15</sup> which it is necessary to consider the Micheal Walzer's ideas (THIGPEN, 1983, p. 122) and consecrates the redistributive principle<sup>16</sup> dividing in three kind: (a) redistribution of market power ensuring that individuals are not forced to bargain without resources for its own subsistence; (b) monetary redistribution, directly related to the tax system; (c) redistribution of property and inheritance rights through the establishment of procedures for resolving conflicts or for cooperative control the means of production

The redistributive principle to be follow from private health system means about the enforcement exchange policies to ensure that the private sector is not forced to provide universal service without resources for sub-

---

<sup>15</sup> The current state has another assignment, "perhaps even more costly. Instead of just abstract and macroeconomic management of the company, also he is to do something that the particular and the market will never do: it fails redistribute. It is the redistribution that must be identified major function of the New State. It is, therefore, a State must base their management on values rather than economic objectives" (SALOMÃO FILHO, 2008, p. 93).

<sup>16</sup> Angelina Figueiredo (1997, p. 95) explains that "the specificity and autonomy of the different spheres of justice is also the basis on which Walzer maintains its arguments in favor of redistribution. Walzer notes that the market is a sphere without borders because money is insidious and market relations are expansive. Thus, an economy radically "laissez-fairiana" would be equivalent to a totalitarian state: invade all other spheres and dominate all other distributive processes. In these situations, i.e. when the market distributions cannot be kept within its own limits, it is necessary to find ways of redistribution policies. "

sistence<sup>17</sup>. Evokes the financial possibilities to do so, a fact hitherto unobserved by ANS. Admittedly, as states Ronald Fiani (2004, p. 102), "the regulatory process is complex, depending on the specific institutional context and the agents that context admits as participants in the process". The Brazilian Supreme Court (2002) judged with the same interpretation, conceiving that "It is seen, therefore, that health care is not the burden of society alone but duty of the State. The private sector cannot be compelled to attend the health and supplementary social security without due consideration. So if private parties were willing to give their affiliates supplementary pension benefits and contractors assumed the obligation to pay for it, the exercise of this option does not ensure them the right to constitutional tax immunity, granted by the legislature only to entities providing social assistance, regardless of contribution to social security (CF, art. 203), as a stimulus to the altruism of its founders".

Adopt an universal policy of health care by the private sector, state-replacement, requires the interaction, not imposition, to state power (and duty) rebalance sectors where special market conditions that create additional benefit for certain economic agents over others. The state counterpart, on the other hand, cannot be understood as a corporate welfare, but rather in the development of an equal incentive policy and rooted in community goals (COMPARATO, 1988, p. 121).

Stimulate mechanisms for financial recovery of the investments made by private health providers is consistent exactly with the social interests, particularly when aimed at prevention and technological research, behold, the lower necessity the treatment higher corporate profits. This policy, guided by the logic of this emerging form, is perceived in some legal provisions, such with Laws n.s 11,196 (the Good Law) and n. 12 715, whose established the National Program to Support Oncology Care - PRONON and the National Programmed to Support Health Care of the Person with Disabilities - PRONAS / PCD, exactly for this purpose.

Sustainable development needs to make the market compatible with the social Constitutional concerns, because it is believed that combining social responsibility, sustainable development, technology and tax incen-

---

<sup>17</sup> This is the direct redistribution, exposed by Salomão Filho (2008, p. 93), whose example can be seen when "the regulation requires the major producers or monopolists who extend their services to consumers (or prospective customers) that they have not access. It is what has lately called universal services".



tives society can achieve improved quality of life, with the satisfaction of basic needs (education, food, health and leisure) (LEWIS, 2010, p. 284).

It happens that, as outlined by Gilberto Bercovici (2006, p. 13), in Brazil there is only the modernization of its structure, without worrying about the full development. So arise institutes that, for a certain period, can act according to the executive agenda, however, once consolidated the scenario, this proves unsustainable for not fix the financial and operational bases of this form of action. The success of a sector, adapting to the explanations of Acemoglu and Robinson (2012),<sup>18</sup> depends on "inclusive institutions" to encourage the industry to invest in research, development and sustainability. It requires planning, democracy and legal certainty. But until now it appears only the implementation of "extractive institutions", which allow modernization, but do not develop a broad and democratic project in favor of the private health system.

A recent example can be seen in the study about Law n. 11.196/2005 from São Paulo Industry Federation (FEDERAÇÃO DAS INDÚSTRIAS DO ESTADO DE SÃO PAULO, 2012, p. 11). After mapping that "Good Law" allows tax compensation for Science and Technology investments, it concludes that the rise in interest rates and the appreciation of the Real between 2009 and 2011 increased imports of manufactured products, reducing the potential use of tax incentives for innovation<sup>19</sup>. With this scenario, the participation of tax incentives for innovation represents a negligible percentage in the GDP of Brazil, from 0,03% to 0,05%, while in countries such as Canada, France, Korea, Denmark and Austria, these values correspond to 0,21%, 0,26%, 0,17%, 0,11% and 0,12%, respectively. This shows, although

---

<sup>18</sup> The authors provide a historical-economic analysis to support the thesis that the success or failure of a nation is closely linked to their conduct of the institutions that govern the country. It therefore classifies inclusive institutions such as those that promote research, development and the evolution of each person in society. This type of institution is the key to the success of nations. On the other hand, extractive institutions are those that allow growth and enrichment of certain segments in an exploratory manner, without allowing the development of the whole society. This type, therefore, results in certain nation of bankruptcy. In this regard, the authors explain (p. 43, 68) "as institutions influence behavior and incentives in real life, they forge the success or failure of nations, individual talent matters at every level of society, but even that needs in a institutional framework to transform it into a positive force (...). Achieving prosperity depends on solving some basic political problems".

<sup>19</sup> Continues the study exposing that "these are the main explanations for the decline in investment and tax breaks for innovation, but it is also necessary to add the limitation of this tax incentive not to allow its use by companies that make the income tax return based on deemed income, and the fact that it is based on taxable income. In other words, companies that did not obtain profit are not eligible for incentive, which is contradictory as it is relatively common phenomenon bitter losses in times of crisis such as those described in the previous paragraph". (FIESP, 2012, p. 11)

specific actions indicate situations guided the development, the economic situation, in fact, is grounded in market interests.

Incentives, like the name, must be directed to promote social and economic development<sup>20</sup>, such as tax breaks, which can occur under the Fiscal Responsibility Law by amnesty, forgiveness, grant, presumed credit, grant of exemption, rate of change or calculation base modification involving itemized reduction of taxes or contributions, and other benefits that correspond to different treatment. These actions can become a company's marketing tools, since the reduction of the tax burden will revert proven the benefit of the company itself and its stakeholders.

However, the mere provision of incentives is not sufficient and should also impose a continuous action, since companies have traditional economic rationale of seeking only quantitative numerical efficiency ratios (VERONESE; BASSOLI, 2011, p. 152). It is required, therefore, the establishment of consistent public policies in government programs, which are mapped to clear objectives, action procedures and intended results<sup>21</sup>.

We must emphasize, finally, that the tracks of this regulation, as well as any strategic decision, should be guided on the completeness of the essential elements of health, especially in the search for sustainability, a prerequisite for a universal and qualitative service. This approach requires the full knowledge of all the elements, behold, in Michael Spence's<sup>22</sup> view in markets where the central issues are often not detectable or an incomplete verification, alignment of incentives are usually imperfect.

Thus, the information economy emerges as the second principle to be observed in maximizing this scarce resource, because ignoring a key

---

<sup>20</sup> The lessons of Lourival José de Oliveira and Isadora Minotto Schwertner (2007), "although inject values in the development of social responsibility practices, businesses can get tax benefits arising from such practices, as a real contribution granted by the State, for the reward companies that invest in the social sphere, making these practices more attractive to the companies themselves, from a financial point of view. Already the company, rather than wait for state action benefits directly to the development of these practices".

<sup>21</sup> How public policies are characterized by discretion, because they are composed of choices of governments and the public purposes implementation of programs, we must investigate their forms of intervention and control. The issue of public policy acquires magnitude on the need for expenditures for the meeting, involving issues related to the legal and institutional feasibility, state budget, resource scarcity and social culture. "The interests of the state and who governs in a given historical moment end, often overlying the constitutional guidelines, with long history of corruption, and the state machine used as an instrument to reach particular interests of those in power" (RIDENTI, 1992, p. 1-5).

<sup>22</sup> Shows Michael Spence (2001, p. 450) that "it should be noted that the information carried by the signal can be productive itself. This will occur if there is a decision that is made better or with greater efficiency, with better information".

variable will change the performance and the institutional structure of the market, hindering the development; and retreating again to an incipient modernization.

### 3. Adopting a balanced regulation: information economy

When George A. Akerlof (1970)<sup>23</sup> wrote the article “The Market for Lemons”, in 1970, founded a view from the theory of regulation. The information economy holds that the state's role is to provide transparency in the regulated sector, allowing all involved to exercise their best choices. Therefore, was highlighted in the theoretical construction of the Joseph Stiglitz's (2011, p. 232)<sup>24</sup> information economy that information is not a standard commodity<sup>25</sup>, but the core of the development, to the extent that "knowledge by itself is a square well"; and accumulation, absorption, adaptation, production and transfer of knowledge are key to success, "then it is not assumed that markets alone will provide sustainable situations. Rather, the presumption is that they will not"<sup>26</sup>.

The information economy analyzes, verifies and accepts the importance of information for market equilibrium and compatibility with the constitutional model, allowing the consumer to evaluate all the details of

---

<sup>23</sup> The idea of the author is warning that the lack of information on a product, given the consumer preference for the price, takes the producer to reduce the quality of your product aimed specifically reduce cost, by allowing it competes similarly to "lemons".

<sup>24</sup> “While I have been discussing the economics of development, that subject cannot be separated from broader aspects of societal transformation (Stiglitz 1998), as Hirschman emphasized in his writings (1958, 1982). Race and caste are social constructs that effectively inhibit the human development of large parts of the population in many parts of the world. The study of how these constructs get formed, and how they change, is thus a central part of developmental studies (Hoff and Stiglitz 2010). In this article, I have emphasized the creation of a learning society. The economics of doing so entails policies that change sectoral composition. But at the root of success is the education system and how it inculcates attitudes toward change and skills of learning. Other policies (for example legal systems, gender-based microcredit schemes, affirmative action programs) can also play an important role”.

<sup>25</sup> In other study, Joseph Stiglitz (2010, p. 1448) dispose that “the fundamental breakthrough in the economics of information was the recognition that information was fundamentally different from others commodities. It possesses many of the properties of a public good – its consumptions is non-rivalrous, and so, even it is possible to exclude others to enjoying the benefits of some piece of knowledge, it is socially inefficient to do so; and it is often difficult to exclude individuals do enjoying the benefits”.

<sup>26</sup> Joseph Stiglitz (2000, p. 232): “But perhaps the most important advances Will be in two areas in which only limited progress has been made so far: on dynamics and on organizations, on how and how well organizations and societies absorv new information, learn, adapt their behavior, and even their structures; and how different economic and organizational designs affects the ability to create, transmit, absorb, and use knowledge information”.

the good and give a choice to all private companies to remain on the market, while allowing the price formation on solid foundations

There are the special characteristics of the information economy: a) information products have its own value, but their benefit also depends on the user's ability to exploit them; b) the information is not consumed with use; c) the information is not a constant, i.e., it generally cannot be quantified; d) the information is an abstraction; e) new information is generally produced with public resources (especially basic research), and those costs are not normally attributed to market price setting purposes; f) the real benefit of the information is difficult to measure because it is limited to its use, which is impractical.

Marc Porat (1977) classified information economy into two sectors: primary and secondary. The primary sector fits distribute information products and services through the market, and the secondary is for information services provided internally in companies and in government. So, health system is integrated in the secondary sector to transform data and information into new information. This information economy aims to implement policies that help "improve the knowledge and the ability of economic agents to plan, execute and control the activities necessary for the construction, operation and maintenance of its information systems, aiming to increase their productivity, efficiency and effectiveness.

This way the information economy, applied to the area of health, allows "the study of how individuals and societies exercise the option to choose the allocation of scarce resources for health among the alternatives that compete for their use, and like these scarce resources are distributed among the members of society", explains Patrícia Coelho Soárez (2012, p. 55).

Such predicates, more than any other, shapes the needs of both private companies and consumers in the private health system, because complete knowledge is one of the elements necessary for the development of the sector. And yet, can only be considered successful when the economic and social discovery provided by the diffusion of knowledge get effective dilution of power centers. The opposition to the general interest of the benefits captured by one of the economic agents should be observed and evaluated carefully by the regulator. The asymmetry information between the health insurance companies and their beneficiaries requires the State

facilitators procedures description and discussion of specific interests (LIMA, 2006, p. 91).

The National Health Agency has worked to identify these gaps and make possible more confinable database to strategic decisions. This effort to integrate with Public Health System can be seen in products registration in local authorities, created in 2002; and most recently by a Standard Platform for Exchange the Information (Standard TISS) - RN n. 127/2006. Such database allowed the agency to disclose, in real time, industry details<sup>27</sup>.

But, despite the abundance of information, these are too technical and complex, difficulty the understanding of the beneficiaries. The complexity of the system redounds in an adverse selection and, therefore, according to Marcia Regina Godoy (2004, p. 23), "this rigidity of the current legislation were made losses for the consumer, for the public system of health, which is now burdened by the migration of underserved to the private health care system." The private health insurance companies without a legal support and without a secure database support for performing actuarial calculations raise the average price shifting the population to the public system.

All the interest groups involved potentiate the differences about the private health sector with the traditional market because a) the health condition is packed factor uncertainties and complex variables; b) full information is not available c) private companies holds power to manipulate the market. According to Lucas Brunetti (2010, p. 28), "in order to eliminate such effects insurers apply restrictions and control over the actions of patients and physicians, as shared insurance, deductibles, list of accredited providers, release protocols". However, the data presented in this study demonstrate that such mechanisms are not exactly efficient. Brazilian National Health Agency<sup>28</sup> announced that in the period between March to June 2013, there were 17,417 complaints about service warranty, relating to 552 operators. These complaints, of consequence, caused the suspen-

---

<sup>27</sup> ANS Tabnet System, available at: <[http://www.ans.gov.br/anstabnet/anstabnet/deftohtm.exe?anstabnet/dados/TABNET\\_RES.DEF](http://www.ans.gov.br/anstabnet/anstabnet/deftohtm.exe?anstabnet/dados/TABNET_RES.DEF)>.

<sup>28</sup> ANS entra com recurso na justiça para manter suspensão dos planos. Rio de Janeiro, 2013b. Available at: <<http://www.ans.gov.br/a-ans/sala-de-noticias-ans/operadoras-e-servicos-de-saude/2215-ans-entra-com-recurso-na-justica-para-manter-suspensao-de-planos>>. Continues exposing the matter that "in 2012, the Agency received 75,916 complaints from beneficiaries, while bodies of the National Consumer Protection System (Sindec) received 27,422 complaints about health plans. The number of complaints received in the last monitoring period was six times higher than in the first, from December 2011 to March 2012".

sion of 26 companies, including the big ones like Unimed, Amil and SulAmérica.

Thus the information about the industry wins major economic relief and allows you to identify situations of no sustainability, as stated Clovis Ricardo Montenegro Lima (2006, p. 4) a "non-existence of correct and sufficient information to guide the decision of economic agents limit its ability to act efficiently, and malfunction source markets and loss wellness". Therefore, information is a key input in the regulatory process to be affected by the ANS, in its entirety, and not just publish economic situations. It is essential for decision-making that denote the sector's sustainability and the optimization of scarce resources.

It is worth remembering that the Brazilian Civil Law itself provides, through the principle of good faith, the need for transparency of information to the legality of the business relationship. With all of the contract variables, both companies and beneficiaries can gather the best choice, encouraging the mutual cooperation.

A full knowledge of the activity by all the parties is essential for the development of any economic sector, as emphasized Gilberto Gallopin (2010, p. 141), for "although new critical knowledge is needed in all areas, in many cases there is already enough basic knowledge to approach the path of sustainability more closely than we are doing at present. The largest difficulty lies, perhaps, in how to put that knowledge into practice".

Information is essential to optimize decisions, especially that which relates to combine efforts to increase the provision of services in health care. The interaction between public and private, as permeated by the current regulatory framework, requires cooperation between actors; factor that arises, therefore, as the last element required for the consolidation and sustainability of the private health market, especially in a competitive and open world in which the country is inserted<sup>29</sup>.

#### **4. Public policy to sustainability: optimizing scarce resources**

---

<sup>29</sup> Herman Chaimovich (2010, p. 99) makes a conclusion about the topic, assuming that "the recovery of world economy will happen an age where competitiveness requires the incorporation of knowledge into products and services. Those countries best prepared to enter into a knowledge-driven market will dominate world economy to an extent unimaginable a decade ago. In the midsts of an economic crisis, it is urgent to reflect on science in Brazil, the possible impact of knowledge in the economy and wonder if the present mechanisms for International Collaboration are adequate to enlarge and deepen the Brazilian science base, incorporate knowledge into products and extend the notion of innovation as an appropriate social good".

An important step to join forces in a cooperative market is the consensus about the necessity to optimize scarce resources. According to Gilberto Gallopin (2010, p. 143) "to identify the areas of genuine common interest should begin by recognizing and identifying the real concrete interests of the different partners. This is not philanthropy, but cooperation for mutual benefit". In the case of private health system, emergency and precariousness of public services, when subsumed the requirements and Constitutional guarantees, demonstrate the necessity to increase the quality of services and, due to its historical features, it is concluded that the intervention of the private sector is essential.

Concentrate efforts for optimization of scarce health resources and harmonize this work with the desires of a Constitutional state requires cooperation between various agents that make up the private health system, all governed under the governance of the ANS. The peculiar nature of health, in the vision of Klaus Semlinger (2008, p. 547) "in a developed Knowledge Society (...) have to be open for collaboration with strangers and they have to combine cooperation and competition because increased specialization unavoidably leads to growing asymmetry of information, hampering both market mode collaboration and the hierarchy mode of control, it is argued that regional collaboration should take place in cooperative networks of trusted partners".

Encouraging the full development through inclusive institutions, requires the formulation of cooperation policies, but also stimulates competition. This way, in addition to an instrument in which the parties acknowledge that they have the resources, expertise and knowledge, must also act to reduce the costs of their transactions, improving performance and promoting the development (CAPORALI; VOLKER, 2004).

The cooperation agreement became the third ideal model of governance aiming a productive form of autonomy and control. As the market model, cooperation combines autonomy and control by applying different levels of governance. However, these markets, cooperation is not anonymous. Rather, in the cooperation networks the information is widely provided without hierarchies or by direct orders; but by the disclosure of the needs and capabilities of each side over the other (SEMLINGER, 2008, p. 552).

Although cooperation and competition apparently show up as antagonistic situations, these are capable of implementation by coordinating governance from ANS, acting legitimately to achieve the fundamental constitutional guarantees and economic needs of the private sector. Klaus Semlinger (2008, p. 548) explains that such cooperation only becomes productive when fragmentation of tasks and responsibilities is ordered by an effective coordination and efficient and, so, establishes three requirements for this achievement.

The first one concerns to the trust at the time that cooperation requires symmetry and mutual dependence, without having any exploitation by one of the parties. Another requirement to cooperation is to encourage competition, insofar as the activity can be permeated by the relationship with other parts, albeit in mutual engagement. Finally, cooperation requires legitimacy of action that delimits the lines and areas<sup>30</sup>.

National Health Agency must act to ensure cooperation between the various sectors from private health, whether public or private. Different from hierarchy, cooperation provides every party involved with the right of autonomous decision making and thus enables them to develop and apply their specialized know how.

This tune to increase free enterprise and make hard procedures regulation, including restricting prices, conditions, coverage, activities, contracts, etc., through various resolutions and opinions, without considering the economic aspect of the market should not be the role of ANS<sup>31</sup>. Regulate the market without considering all the people involved, demonstrates the no sustainability of the sector, because there are crucial information gaps it is therefore also urgent and necessary to improve the availability, dissemination and integration of existing relevant knowledge. In short, it is necessary to create an incentive policy that motivates the private sector to act in a cooperative way, aiming goals beyond self-interest.

Like network cooperation (or cooperative management) observed in the sectors of telecommunications, internet and electricity, where all the actors involved in the private health should be placed in harmony with the

---

<sup>30</sup> Klaus Semlinger (2008, p. 555) explains that “there are three ways to accomplish such a combination of cooperation and competition: (1) appropriate internal redundancy; (2) clearly demarcated areas in which either cooperation or competition applies; (3) established legitimacy of selectivity”.

<sup>31</sup> Gilberto Gallopin (2010, p. 125) affirms that “the sustainability (or unsustainability) of development is deeply influenced by a number of fundamental driving forces. Some of these drivers may be called proximate, the immediate causal processes directly impinging upon society and the environment (population, economic patterns, technology, and governance and policy)”.



public system to provide a health service for all the universality of beneficiaries contributing with private health. In consequence, the public service can direct their efforts to the social welfare, extending attention to a qualitative and quantitative service<sup>32</sup>.

Note that the guarantees and fundamental rights envisaged in the Constitution must be preserved, encouraged and funded. Cooperation is the path that can bring together the efforts of the public health sector to achieve better degree of satisfactoriness through interaction with private health. The first steps were taken, but so far there has been only the mining segment practice, which is not in line with the sector's sustainability.

## 5. Conclusion

There is no doubt that private health companies are important actors to the full welfare State, as recommended by the World Health Organization. It is the State's duty that, under Article 199 of the Constitution allows and incentive private under a strict control by the Government. Promoting well-being, private health system have had to adapt their activity to the ideas brought by the consolidated regulatory framework with the creation of the National Health Agency in 2000. No longer admits an isolated action without considering the social aspirations.

Health is the main aspect for the welfare assurance and dignity of the human being, so that the state policy should have it as a priority, as recommended by the Article 196 of the Constitution. In this sense it affects the private health system, which historically acted freely and without parameters. This new context created a sensitive regulatory field over the past 20 years. It was up to the ANS to manage this segment that has unique singularities and, by choice, still under the aegis of private law, even under strong state interference.

Because the Brazilian structural and historic dependence from private companies in health services, this new regulatory framework increase

---

<sup>32</sup> Yochai Benkler (2011) exposes that "for decades we have been designing systems tailored to harness selfish tendencies, without regard to potential negative effects on the enormous potential for cooperation that pervades society. We can do better. We can design systems –be they legal or technical; corporate or civic; administrative or commercial- that let our humanity find a fuller expression; systems that tap into a far greater promise and potential of human endeavour than we have generally allowed in the past. (...) In other words, we need systems that offer material rewards to those who tend to be motivated by self-interest, without putting of those who are intrinsically inclined to cooperate."

responsibilities to the private companies to charge full pay service to its beneficiaries, regardless of contractual restrictions. The list of mandatory procedures and the reimbursement to SUS are instruments that corroborate the State's intention, increasingly, to pass on to the private sector a liability that the rigor of Article 196 of Constitution should be the primary duty of the State.

The private health system acts in parallel to the State in economic market activity, receiving the status of private service. Optionally, by segregating the legal framework of the additional health from those associated with government, is proved that the Brazilian legal system reaffirms retributive character of the sector, but that it should interact with the notion of comprehensiveness of care. The private health companies did not complement the state service, but rather allow the beneficiary population second choice of care, in a supplemental form.

The state's policy replacing public to private sector is hindering this second possibility, creating to companies the burden of fully treatment for the beneficiary. It is an odd movement. Transferring to part of the private sector a unique social burden demands a State consideration to the financial stability, aiming sustainability. It turns out that, to date, not considered this specificity in an expressed policy results in a difficult task to reconcile their social role with the profit-making purposes. The numerous economic difficulties, suspension of the marketing plans, bankruptcy, negative sales of individual plans, among others, prove the incompatibility of the private sector with the desires permeated by the current state agenda.

It is necessary to the sector's sustainability and its development the recognition of these differences, promoting incentives (especially tax) to permit the financial stability of these institutions. It is also essential the effort for the full flow of information, especially those concerning the health prevention. Once characterized and mapped all industry members, it is an indispensable role the cooperative way between all those involved with the health system.

National Health Agency needs to promote these actions, jointly, without forgetting the fundamental dictates of the Constitution and at the same time allowing economic purposes are guarded. These are the variables that will, in a sustainable manner, leveraging health in Brazil.

## References

ACEMOGLU, Daron, ROBINSON, James. **Why Nations Fails: the origin of power, prosperity and poverty**. EUA: Crown Business, 2012.

AGÊNCIA NACIONAL DE SAÚDE SUPLEMENTAR. **ANS entra com recurso na justiça para manter suspensão dos planos**. Rio de Janeiro, 2013b. Available at: <<http://www.ans.gov.br/a-ans/sala-de-noticias-ans/operadoras-e-servicos-de-saude/2215-ans-entra-com-recurso-na-justica-para-manter-suspensao-de-planos>>.

ANDRADE, José Maria Arruda de. **Legalidade Tributária, Segurança Jurídica, Pós-positivismo e a difícil Relação entre Política e Direito**. São Paulo: Thesis, v. 5, p. 1, 2006.

ÁVILA, Humberto. **Teoria da Igualdade Tributária**. São Paulo: Malheiros, 2009.

BENKLER, Yochai. **The Penguin And The Leviathan: How Cooperation Triumphs Over Self-interest**. EUA: Crown, 2011.

BERCOVICI, Gilberto. **Constituição Econômica e Desenvolvimento: uma leitura a partir da Constituição de 1988**. São Paulo, Malheiros, 2005.

\_\_\_\_\_. **Democracia, inclusão social e desigualdade**. Manaus: Anais Conpedi, 2006.

BRASIL. Ministério da Saúde. **Núcleos de Economia da Saúde: orientações para implantação**. Ministério da Saúde, Secretaria-Executiva, Departamento de Economia da Saúde, Investimentos e Desenvolvimento. Brasília: Editora do Ministério da Saúde, 2012.

\_\_\_\_\_. **Supremo Tribunal Federal**. Recurso Extraordinário nº 202.700, Ministro Maurício Corrêa, Plenário, judged in 8-11-2001, published in 1-3-2002.

BRUNETTI, Lucas. **Assimetria de informação no mercado brasileiro de saúde suplementar: testando a eficiência dos planos de cosseguro**. Dissertação (Mestrado em Economia Aplicada) - Escola Superior de Agricultura Luiz de Queiroz, Universidade de São Paulo, Piracicaba, 2010. Available at: <<http://www.teses.usp.br/teses/disponiveis/11/11132/tde-20042010-082708/>>. Acesso em: 21 ago. 2013.

CAPORALI, Renato; VOLKER, Paulo (Org.). **Metodologia de desenvolvimento de arranjos produtivos locais: projetos promos\_Sebrae-BID**. Versão 2.0. Brasília: Sebrae, 2004.

CHAIMOVICH, Hernan. **International collaboration in science: where to go from where? In: Cooperação Internacional na Era do Conhecimento**. Brasília: Centro de Gestão e Estudos Estratégicos, 2010.

COMPARATO, Fabio Konder. Planejar o Desenvolvimento: perspectiva institucional. **Revista de Direito Público**, São Paulo, Revista dos Tribunais, n. 88, out./dez. 1988.

FIANI, Ronald. Afinal, a quais interesses serve a regulação? **Revista Economia e Sociedade**, Campinas, v. 13, n. 2 (23), p. 81-105, jul./dez. 2004.

FEDERAÇÃO DAS INDÚSTRIAS DO ESTADO DE SÃO PAULO – FIESP. **Os incentivos fiscais à inovação no Brasil**. Departamento de Competitividade e Tecnologia. São Paulo, 2012.

FIGUEIREDO, Argelina Cheibub. Princípios de justiça e avaliação de políticas. **Lua Nova**, n. 39, p. 73-103, 1997.

FIGUEIREDO, John, FIGUEIREDO, Rui. The Allocation of Resources by Interest Groups: Lobbying, Litigation and Administrative Regulation. **Business and Politics**, University of Berkeley, Vol. 4, No. 2, 2002.

FIGUEIREDO, Leonardo Vizeu. **Curso de Direito de Saúde Suplementar**: manual jurídico de planos e seguros de saúde. São Paulo: MP, 2006.

GALLOPIN, Gilberto C. Sustainable development challenges to S&T: implications for international cooperation. *In*: GALVÃO, Antonio Carlos Figueira. **Cooperação Internacional na Era do Conhecimento**. Brasília: Centro de Gestão e Estudos Estratégicos, 2010.

GODOY, Marcia Regina, *et al.* **Planos de saúde e a Teoria da Informação Assimétrica**. Porto Alegre: UFRGS, 2004.

HIRSCH, Joachim. Globalização e mudança social: o conceito de teoria materialista do Estado e a Teoria da Regulação. Trad. Moema Kray. **Ensaios FEE**, Porto Alegre. v. 19, n. 1, p. 9-31, 1998.

LEWIS, Sandra Barbon. Responsabilidade Social e Incentivos Fiscais na Ciência, Tecnologia e Inovação. **Scientia Iuris**, Londrina, v. 14, 2010.

LIMA, Clóvis Ricardo Montenegro. Informação, assimetria de informações e regulação do mercado de saúde suplementar. **Revista Eletrônica Biblioteconomia**, Florianópolis, n. esp., 1º sem. 2006.

MELLO, Celso Antonio Bandeira de. **O Conteúdo Jurídico do Princípio da Igualdade**. 3. ed. São Paulo: Malheiros, 2010.

OLIVEIRA, Lourival José de; SCHWERTNER, Isadora Minotto Gomes. Breve análise de práticas de responsabilidade social empresarial e a concessão de incentivos governamentais em âmbito federal. **Jus Navigandi**, Teresina, ano 11, n. 1409, 11 maio 2007. Available at: <<http://jus2.uol.com.br/doutrina/texto.asp?id=9864>>.

PELTZMAN, Sam. **The economic theory of regulation after a decade of deregulation. *Brooking Papers on Economic Activity 1989: Microeconomics***. Washington, DC: The Brooking Institution Press, 1989.

PORAT, Marc. **The Information Economy**. Washington, DC: US Department of Commerce, 1977.

RIDENTI, Marcelo. **Política pra que?** São Paulo: Atual, 1992.

RISI JUNIOR, João Baptista e NOGUEIRA, Roberto Passos. As condições de saúde no Brasil. *In*: FINKELMAN, J. **Caminhos da saúde no Brasil**. Rio de Janeiro: Editora Fiocruz, 2002.

SALOMÃO FILHO, Calixto. **Regulação da Atividade Econômica**. 2. ed. São Paulo: Malheiros, 2008.

\_\_\_\_\_. **Regulação e desenvolvimento**. São Paulo: Malheiros, 2012.

SEMLINGER, Klaus. Cooperation and competition in network governance: regional networks in a globalised economy. **Entrepreneurship & Regional Development**, vol. 20, nov2008.

SOÁREZ, Patrícia Coelho. Uso da avaliação econômica nos processos de decisão de incorporação de novas tecnologias em saúde. *In*: Secretaria Municipal da Saúde de São Paulo. Coordenação de Epidemiologia e Informação (CEInfo). **A Economia da Saúde: Desafios para incorporação da dimensão econômica na produção de informação para a gestão do SUS em São Paulo**. São Paulo: CEInfo, 2012.

SPENCE, Michael. Signaling in Retrospect and Informational Structure of Markets. **Stanford Business School**, Stanford University, 2001.

STIGLER, George J. The economics of conflict of interest. **Journal of Political Economy**, vol. 75, issue 1, feb. 1967.

\_\_\_\_\_. Economic Competition and Political Competition. **Public Choice**, Chicago University, vol. 13, p. 91-106, 1972.

STIGLITZ, Joseph E. **Freefall: America, Free Markets, and the Sinking of the World Economy**. Reino Unido: W.W. Norton & Company, 2010;

\_\_\_\_\_. The contributions of the economics information to twentieth century economics. **The Quarter Journal of Economics**, Boston, Harvard College, Novembro 2000.

\_\_\_\_\_. Rethinking macroeconomics: what failed, and how to repair it. *Journal of the European Economic Association*. **Columbia Univesity**, New York, aug. 2011.

THIGPEN, Robert B. Spheres of Justice: A Defense of Pluralism and Equality. **Journal of Business Ethics**, vol. 4, 1. ed., p. 63-64.

TRUMAN, David. **The governmental process**. New York: Alfred A. Knopf, 1951.

VERONESE, Thábata Biazuz; BASSOLI, Marlene Kempfer. Controle estatal das políticas públicas tributárias e econômicas de incentivos para a atividade empresarial socioambiental responsável. **Scientia Iuris**, Londrina, v. 15, n. 1, p. 151-173, jun. 2011.

WALZER, Michael. **Spheres of Justice: A Defense of Pluralism and Equality**. New York: Basic Books, 1983.