



Opinion

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Children's Right to Make Healthcare Decision: The Situation in Brazil



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Opinion:

There is a growing awareness concerning the respect for patient autonomy especially in countries that already have a Patient's Rights Law. However, in Brazil, there is no legislation on patient rights at a national level until today. It is challenging to protect patients' interests, due to the absence of specific laws on the matter. Without a charter listing their basic rights, it is more difficult for them to deal with healthcare professionals, hospitals and health insurance companies

The absence of proper legislation proves to be even more harmful when the patient is a child. Children are one of the groups that most deal with obstacles when it comes to applying their rights in health care. In Brazil, children are being subjected to paternalistic and authoritarian conduct by health professionals [1]. They don't have a statutory right to consent to treatment.

According to the Brazilian Civil Law, a person's wish will only produce legal effects if he or she is considered capable. Thus, the adolescent under 18 is not allowed to engage or decide on health care by him or herself. The Child and Adolescent Statute, the central law on children's rights in Brazil, discusses health care exclusively regarding access to health goods and services. It places the child only as a consumer or user of a health service not as a right-holder in healthcare.

The existence of laws that guarantee the child rights is essential to promote the quality of their health care, as it places their needs at the centre of the decision-making process. Health quality is related to the notion of respect for patients' rights.

Brazilian law has not yet effectively incorporated Article 12 of the Convention on the Rights of the Child (or CRC). Article 12

of the CRC guarantees the children the opportunity to influence all decisions concerning them. It means that the children, from a human rights perspective, should be actively involved in the decision-making processes, and it is up to the adults responsible for their care to express how their outlook affects the decision.

Their child's views should be sought on all aspects of health provision, including what services are needed, how and where they are best provided, and how to promote children's capacities to take increasing levels of responsibility for their own health and development.

Besides being a human right, children's participation in their health care results in benefits. Children who have not been given the opportunity to understand their illness exhibit significantly greater distress, more internalization of problems, and increased symptoms of depression. On the contrary, sharing information with a child who is gravely ill and learning about a child's hopes and fears can give parents and clinicians valuable insights into what the illness means to the child, how her or she is coping, and what is important to them as individuals [1]. As children become older and attain greater capacity, they should be involved more fully in planning their care.

According to Committee's on the Rights of the Child, States parties cannot begin with the assumption that a child is incapable of expressing her or his own views. On the contrary, States parties should presume that a child has the capacity to form her or his own views and recognize that she or he has the right to express them; it is not up to the child to first prove her or his capacity [2].

In Brazil, children are still treated as an object of care [3]. There isn't any kind of analysis of the child's maturity and ability

to make a decision. Parents will always decide for the child. All decisions about a child are taken by the parents even if the child demonstrates capacity to do it.

In conclusion, this omission in Brazilian legislation directly violates the CRC. The CRC introduces a child-centered perspective, covering a range of civil and political rights (Articles 13, 14, 15, for example), and economic, social and cultural rights (Articles 24, 26, 27, for example). However, despite this broad estimate of rights, children in Brasil still play a secondary role in health care, being largely excluded from interactions between their parents and health care professionals. This situation must be changed.

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