



Long-term care facilities for the elderly: from legislation to needs

Instituições de longa permanência para idosos: da legislação às necessidades

Institución de larga permanencia para ancianos: de la legislación a las necesidades

Ezequiel Vitório Lini¹, Marilene Rodrigues Portella¹, Marlene Doring¹, Maria Izabel Penha de Oliveira Santos²

Objective: to analyze existing federal legislation on public policies that deal with the elderly's rights, with emphasis on the assistance provided in long-term care facilities for the elderly and the practical impact of these laws. **Methods:** this is a documentary analysis of descriptive character. **Results:** one identified, among nineteen laws, decrees and ordinances in the last 25 years, significant developments aimed at the elderly's welfare, as well as structural proposals and the supervision of long-term care institutions. **Conclusion:** the analysis conducted in the documents allowed the conclusion that the needs point to the decentralization of institutions, increase of vacancies and bigger financial investment of public institutions.

Descriptors: Aged; Homes for the Aged; Public Policies.

Objetivo: analisar legislações federais existentes sobre políticas públicas que versam sobre os direitos do idoso, com ênfase à assistência em Instituições de Longa Permanência para Idosos e o impacto prático dessas leis. **Métodos:** análise documental, de caráter descritivo. **Resultados:** identificaram-se, dentre as dezenove Leis, Decretos e Portarias nesses últimos 25 anos, evoluções significativas visando ao bem-estar dos idosos, além de propostas estruturais e de fiscalização das Instituições de Longa Permanência. **Conclusão:** a análise realizada nos documentos permitiu concluir que as necessidades direcionam para descentralização das instituições, aumento de vagas e maior incentivo financeiro dos órgãos públicos.

Descritores: Idoso; Instituição de Longa Permanência para Idosos; Políticas Públicas.

Objetivo: analizar legislaciones federales existentes sobre políticas públicas que tratan de los derechos del anciano, con énfasis en la atención en hogares para ancianos y los efectos prácticos de estas leyes. **Métodos:** análisis documental, de carácter descriptivo. **Resultados:** se identificaron, entre las diecinueve Leyes, Decretos y Edictos en los últimos 25 años, avances significativos para el bienestar de ancianos, así como propuestas estructurales y supervisión de hogares para ancianos. **Conclusión:** el análisis de los documentos señaló las necesidades directas para la descentralización de las instituciones, aumento de empleos y mayor incentivo financiero de los órganos públicos.

Descritores: Anciano; Hogares para Ancianos; Políticas Públicas.

¹Universidade de Passo Fundo. Passo Fundo, RS, Brazil.

²Universidade do Estado do Pará. Belém, PA, Brazil.

Corresponding author: Ezequiel Vitório Lini

Secretaria do Programa de Pós-Graduação em Envelhecimento Humano, Universidade de Passo Fundo, BR 285, Bairro São José, CEP: 99052-900. Passo Fundo, RS, Brazil. E-mail: ezequielphysio@yahoo.com.br

Introduction

Long-term care facilities for the elderly were created to fulfill a demand for the elderly's care, when a family has no economic and/or social support to be recognized as a provider, delegating to these institutions its role. On the other hand, the offer of family care decreases as this demand grows. Hiring full-time professionals to work at home is unaffordable for most families and institutions become an increasingly discussed alternative⁽¹⁾.

Reality shows that due to financial difficulties to hire a specialized service, a family member usually takes the caregiver role. Historically, a woman carries out this task, wife, daughter, daughter-in-law, regardless of the bond she has with the senior citizen. However, the traditional family model, with man as the provider of financial resources and the woman responsible for the house, children and sick old people, no longer represents contemporary reality. Families are smaller, the number of single-parent families is growing, women are inserted in the labor market and these transformations bring disadvantages to dependent elderly people⁽²⁾.

Currently institutions for older people are still shrouded in negative connotations, this is pretty much due to the way they were created and structured. These institutions also popularly known as "nursing homes" have persistent association with poverty, abandonment, a place where violence is committed against the elderly⁽³⁾.

Initially these environments were classified as "total institution". These institutions were divided into categories according to the characteristics of the residents, among which one mentions that it was intended for the care of people considered harmless and incapable, consisting of blind, aged, orphans and destitute people⁽⁴⁾. One can imagine, based on these divisions, the size of the internal problem that used to exist with this variety of special needs in the same

place and the negative impact of these entities for residents and for the community.

Nowadays institutions are better organized mainly due to the increase of legal provisions and increased enforcement. The improvements are undeniable, but still require a number of measures that enable access for all senior citizens who may need it.

It is noteworthy that our country is often remembered by the need for constant adjustments to the text of the constitution from 1988. Some constituent gaps require the creation of a range of decrees, ordinances or amendments. Given this context, one understands that a review about the legislation aimed at long-term care facilities for the elderly will reflect more clearly on measures proposed by legislators and/or executive institutions, as well as the impact on the elderly segment. Thus, with the population growth of people aged 60 and over, due to their care needs, disabilities that may arise, especially in the oldest ones, social inequities and the laws that exist in our country with emphasis on long-term care facilities for the elderly, motivated the conduction of this analysis.

Thus, the aim of this study was to analyze the existing federal laws about public policies that deal with the rights of the elderly, with emphasis on care in long-term care facilities for the elderly and the practical impact of these laws.

Method

This is a documentary study addressing Brazilian public social and health policies, aimed at the elderly population, with special attention to long-term care facilities. The first milestone was the Brazilian Constitution of 1988⁽⁵⁾ and the sequence of laws, resolutions, ordinances and decrees that were organized in chronological order.

The documentary research is supported by

techniques and methods aimed at the identification, interpretation and analysis of printed and/or scanned documents⁽⁶⁾. After the Brazilian Constitution, one sought in authentic and reliable sources of legal nature focused on the elderly and/or in long-term care facilities for the elderly segment. This method (documentary) has the advantage of, at the time of data collection, eliminating virtually potential bias in content selection⁽⁶⁾, as one chose a chronological and not excluding sequence of any applicable law about the subject.

The data were researched in the period from September to November 2013, as they were provided by the Ministries of Social Development and Hunger Alleviation, Social Welfare, Justice, Planning, Social Security, Health and by the Federal Senate, listed in the references at the end of this article. One used the following keywords: the elderly, legislation, long-term care facility for seniors and public policies. In order to synthesize and organize the stage of data analysis one conducted at first a superficial reading, then exhaustive reading and finally comprehensive reading, which enabled the systematic organization of the results. The interpretation and inferences that were made followed the theoretical approach adopted.

Results

The reference in care for the elderly, under law principles, has as its starting point the Brazilian Constitution of 1988⁽⁵⁾, passing by social and health policies with tenuous limits⁽¹⁾, which makes it impossible to separate them on this approach. Laws in the late 1980s and throughout the next decade were mainly focused on access to quality health care for all citizens. They also emphasize that some spheres of society, among them the elderly, deserve special attention. The first actions were taken in this period, still small, of adequacy of nursing homes for the elderly and geriatric clinics. Figure 1 demonstrates this legal path.

Year	Legal determination
1988	Federal Constitution.
1989	Order no. 810 of the Ministry of Health about the operating standards of the institutions that provide care for the elderly.
1990	Law no. 8,080. National Health Policy.
1993	Law no. 8,742. Organic Social Assistance Law.
1994	Law no. 8,842 Promulgates the National Policy for the Elderly.
1996	Decree no. 1948. Regulates the National Policy for the Elderly.
1999	Order no. 1395. National Policy for the Elderly's Health.

Figure 1 - Legislation aimed at policies for the elderly

In the 2000s the actions directed to the improvements and adjustments of long-term care facilities for the elderly are intensified, first with the Secretary of State for Social Assistance by decree no. 2,874⁽⁷⁾. In the next year there is the first Care Operating Rules for the Elderly's Services in Brazil⁽⁸⁾. It is noteworthy the creation of the Statute of the Elderly in 2003, that set off a series of regulations and rules more and more specific and rigid to improve the functioning of long-term care facilities for the elderly, as shown in Figure 2.

Year	Legal determination
2000	Order no. 2,874. State Department of Social Services.
2001	Ordinance no. 73. Working Regulations of Attention Services for the Elderly in Brazil. Established by the Ministry of Social Welfare.
2003	Law No. 10,741. Statute of the Elderly.
2004	Resolution no. 145. National Social Assistance Policy.
2005	Operational Basic Standard
2005	Resolution of the Board No. 283, from the National Health Surveillance Agency.
2006	Order no. 648 from the Ministry of Health approved by the National Policy of Primary Care.
2006	Order no. 2,528 reviewed the National Health Policy for the Elderly.
2006	Ordinance no. 399. Pact for Health.
2008	Resolution no.12 of the National Council of the Elderly's Rights regulated article 35 of the Statute of the Elderly.
2010	Law no. 12,213. Fund for the rights of the elderly.
2012	Approved the Draft Law 284/11 regarding the profession of elderly's caregiver.

Figure 2 - Legislation emphasizing the institutionalized elderly

Focused on the determinations of the Constitution of 1988⁽⁵⁾, one highlights article 203 which states that social assistance should be offered to those who need and it also relates their protection objectives to families, motherhood, childhood, adolescence and old age. In the article 229 the constitution states that parents have a duty to assist, raise and educate their minor children and children over 18 have a duty to provide the necessary support to their parents' necessity or illness. At that moment, the government transferred to families the care to the elderly, which in their absence transfers the responsibility to other institutions, as shown in article 230, aimed primarily to families, society and finally the government the duty to protect older people, with guarantees of participation in social life, maintaining their dignity and their right to live. It also determines that the protection of the elderly, through support programs, should be carried out preferably in their homes.

The Ministry of Health in 1989 published the decree no. 810⁽⁹⁾ related to working standards of nursing homes, geriatric clinics and other institutions for the elderly's care.

In 1990 law no. 8,080⁽¹⁰⁾ was signed, creating the National Health Policy which regulates actions and health services throughout the national territory. It says that, as health is a fundamental right to human beings, the government should provide the necessary conditions for their full maintenance. At that moment one defines the conditions for the promotion, protection and recovery of health, including the organization and operation of services.

In the scope of social security, in December 7, 1993 the federal law no. 8,742⁽¹¹⁾ was created. The organic law of social assistance is basically the legal instrument that regulates the constitutional assumptions, i.e., it defines and ensures that the right to social assistance is fulfilled. In article 1 it says: "Social assistance, a citizen's right and is a duty of the government, it is a non-contributory social security policy, which provides social bases to ensure the

fulfilment of basic needs"^(11: 170). It also guarantees protection of families, motherhood, childhood, adolescence and old age. It determines that disabled people and the elderly who prove not being able to provide their own maintenance and whose families do not have resources will be granted a monthly minimum wage.

In 1994, the law no. 8,842⁽¹²⁾ promulgated the National Policy for the Elderly ensuring social rights for senior citizens, providing means to guarantee the promotion of their autonomy, integration and effective participation in society. After that, the decree no. 1,948⁽¹³⁾ from 1996 regulated the National Policy for the Elderly and says: "Art. 3: It is understood as a nursing home the service of in-patient character for the elderly without family ties or unable to provide for their own subsistence to meet their housing, food, health and social life needs"^(13:1).

The focus in 1999 - with the National Policy for the Elderly's Health (decree no. 1,395/1999)⁽¹⁴⁾ prepared by the Ministry of Health - was the prevention of typical diseases of aging. After realizing the costs with admissions of the elderly, the Ministry of Health listed guidelines aimed at healthy aging, maintaining their functional capacity, assistance and the rehabilitation of their needs, training of human resources, support for informal care, encouraging research. At this moment, one still did not talk about long-term care facilities for the elderly, but in geriatric day hospitals, community centers and day centers.

The modalities for assistance service to people considered as vulnerable, namely children, adolescents, the elderly and people with disabilities were defined by ordinance no. 2,874⁽⁷⁾ from August 2000 by the Ministry of Social Welfare. The actions would be aimed at recipients whose per capita monthly family income was up to half a minimum wage. Specifying support for the elderly, it should be noted that they would be attended full time by institutions, with family friendly residence, residence in home-houses, in university homes, attendance in day centers, home and community center, each with

its operating rules. As for financial resources for these actions, it says: Art. 3 - To establish that, according to the decisions of management commissions and social care councils, taking into account local reality and specificity of costs of different types of service, federal government's financial support values shall be complemented by the states' government, by the Federal District's and the cities' resources, maintaining the agreed minimum goals⁽⁷⁾.

Then, in 2001 the State Department of Social Welfare established by decree n. 73⁽⁸⁾, the care services operating rules for the elderly in Brazil.

One registered an advance, with the Statute of the Elderly, law no. 10,741⁽¹⁵⁾ from 2003, which regulates principles already guaranteed by the constitution of 1988⁽⁵⁾ and also increases what was defended the law no. 8,842. It is a legal support for possible punishment provided for the family, for institutions and for the state itself, if they violate the rights of the elderly.

In 2004, resolution no. 145⁽¹⁶⁾ was adopted, which referred to the National Social Assistance Policy. This policy was created in order to bring about the guidelines of the Organic Law of Social Assistance⁽¹¹⁾.

One implemented in 2005, the Basic Operational Norm⁽¹⁷⁾. At that moment it was established that the long-term care facilities for the elderly were characterized as special protection services of high complexity and that they should be subsidized in partnership with states, cities and civil society. These environments are designed to the elderly who are physically or mentally dependent, when there is physical, emotional or financial disability of families to provide such care.

To establish supervisory strategies of long-term care facilities for the elderly, the National Health Surveillance Agency created the board resolution - no. 283⁽¹⁸⁾ from September 26, 2005. For considering health care of paramount importance, risk reduction and quality in the provision of services to the elderly, one traced the technical regulations of operation of long-term care facilities for the elderly. Thus, in case

of non-compliance with the rules, institutions started to be penalized⁽¹⁸⁾.

Ordinance no. 648 of the Ministry of Health in 2006⁽¹⁹⁾ approved the National Primary Care Policy, which reviewed the guidelines and rules for the organization of primary care for the Family Health Program and for the Program of Community Health Agents. At that time, the Family Health Program was organized based on the territory covered and it was up to the staff to provide basic services to the entire population of this established area. Thus, one can understand that long-term care facilities for the elderly were a responsibility of the Family Health Programs, nowadays called Family Health Strategies.

In 2006, ordinance no. 2,528/2006⁽²⁰⁾ reviewed the National Policy for the Elderly's Health from 1999 (decree no. 1,395/1999)⁽¹⁴⁾, which started to be called the National Health Policy for the Elderly Person⁽²⁰⁾ and reaffirmed the principles of the national policy for the aged people according to the Unified Health System. The purpose of this policy was to recover, maintain and promote the independence of older people with individual or collective measures based on the guidelines of the Unified Health System. In that moment it was valued the quality of care, the training of health professionals from the Unified Health System, the cooperation of national and international experiences in care for the elderly and the support for studies and research. One recognizes the effectiveness of care teams in the prevention and intervention of the disorders characteristic of this age group.

The year 2006 showed definitely several laws, ordinances and decrees that mentioned the elderly. One highlights the decree 399⁽²¹⁾ from 2006, which showed the Pact for Health - consolidation of the Unified Health System. At this moment priorities were defined and the first one was the pact for life that prioritized the elderly's health. One determined the implementation of the aforementioned National Health Policy for the Elderly Person⁽²⁰⁾ and the directive that deserves attention refers to home care, which proposes providing services in the

home environment. It bets on the benefits of this environment for patients' recovery.

Resolution no. 12 from the National Council of the Elderly's Rights⁽²²⁾ from April 11, 2008 appeared to regulate article 35 of the Statute of the Elderly⁽¹⁵⁾. In its first article it was established the obligation of all long-stay institutions or home-houses to sign a contract to provide services to the elderly sheltered. In this resolution, alternatives to agreements between long-term care facilities and the elderly were established. In the second article, in section II, it was established that the financial participation of the elderly in non-profit non-governmental organizations should not exceed 70% of any pension benefit or social assistance and that the remaining 30% the elderly could enjoy as they wished. This service rendering contract promoted greater guarantees for the elderly and their families about the care offered by institutions.

The issue of financial support for the programs was announced in law no. 12,213⁽²³⁾ from 2010, establishing the National Fund for the Elderly, which was aimed to finance programs and activities for that population; to invest in the creation of conditions that promote integration and participation of this segment in society. The funds for these actions came from donations made to the local, state and federal funds. The stimulus was allowing deduction from the income tax payable by individuals and companies due to the donations made. For individuals the global deduction limit was six percent, while for companies it could not exceed 1% (one percent) of the due tax.

In September 2012 the draft law 284/11⁽²⁴⁾ was approved, which refers to the regulation of the profession of caregiver. It determines that caregiver is someone who provides aid and assistance exclusively to seniors, who is over 18 years old, with completed elementary school and with a specific qualification course. Those who, at the time the law is approved, have already worked as caregivers for at least two years are exempt from the qualifying course requirement. The attributions of this professional were determined, based on the support to the performance of personal

hygiene and nutrition, preventive health care and aid in mobility, emotional support and social life. The administration of drugs, according to the law is possible once authorized by the professional responsible for prescribing it. The project determines that the elderly's caregiver may act in long-term care facilities, hospitals, homes and even cultural and social events.

Discussion

The discussion takes as its starting point the interface between the legal provisions and the repercussions that fall on the reality of institutions. A milestone in the definition of a new paradigm in attention to the elderly begins with the National Policy for the Elderly. However, the accelerated process of aging population impacts and brings changes in the Brazilians' epidemiological profile, mainly because it is characterized by significant heterogeneity and great social inequalities. To meet and respond to the growing demands for care one has to consider the provision of services, both public and private. There is a consensus among scholars in the field of gerontology, that as a population ages, care is the main dimension in health, and thus the need is focused on investing in health promotion and prevention of various diseases and comorbidities, in different care services to the elderly.

Institutions for the elderly assume a hybrid character, because while they adopt health care aspects, they also have under their jurisdiction the social welfare. As a collective residence⁽¹⁸⁾, its functionality is a place to live, but as it is the provision of a service, it is subject to legal norms.

Initially, a nursing house aimed to shelter people with no family, who were destitute and mentally ill. In this historical course it is observed that it was not only the nomenclature that has changed from nursing home to long-term care facilities for the elderly, one observed mainly changes in the residents' profile.

For this, decree no. 810/1989⁽⁹⁾ was created,

the first to set standards and operation standards. With its repeal in 2005 after the approval of the technical regulations of the National Agency for Sanitary Surveillance, the board resolution no. 283⁽¹⁸⁾ registered a breakthrough as a legal instrument.

However, what is usually seen in Brazil is a distant reality according to standards required in the technical regulations. In these environments one often finds that medical attention is impaired, and that care is sometimes inappropriate or done by untrained professionals, which tends to complicate the situation of institutionalized elderly people, besides the situation of isolation from social life⁽³⁾.

One of the major complaints from managers of long-term care facilities for the elderly is the lack of care by the Unified Health System, even being in the area covered by the Family Health Strategies⁽²⁵⁾. Elderly people and institutions that receive them are ignored by the system which reinforces the exclusion and invisibility of these environments⁽²⁵⁾.

The financial realities of long-term care facilities for the elderly show that 95.7% of the revenue of for-profit institutions comes from the fees paid by residents and/or their families⁽¹⁾. In public ones, fees account for 24.7%⁽¹⁾ which meets what was proposed by the Statute of the Elderly⁽¹⁵⁾ which recommends charges only in private or philanthropic institutions. Public funding, whether federal, state or local, represents 20% of total revenues of these institutions. Out of this percentage, 70% are found in public institutions, 21.8% in philanthropic and 0.8% in private ones⁽¹⁾. The participation of the government is not enough for the needs of these institutions, which are kept mainly with funds from residents and donations. Despite many advances in the income transfer sector, with reduction in poverty rates, our country falls short in providing these services.

If it is known that the elderly population has grown and that with them there was an increase in chronic diseases that require care, it is conceivable that the number of long-term care facilities for the

elderly has also increased. Between 1990 and 1999, for example, 46.1 institutions came into operation per year. This increase jumped to 90 institutions opened per year between 2000 and 2009, 57.8% of them private ones⁽²⁶⁾, while public and philanthropic showed a decline in growth rates in the 2000s compared to the previous decade.

The city of Rio de Janeiro, for example, has a higher concentration of elderly people and the requests for places in institutions have grown substantially⁽²⁷⁾. In 2008 there were already around 30 to 40 requests of vacancies per day, mostly by people without financial conditions⁽²⁷⁾. This is the portrait of Brazil, with visible and growing demand for these services, however, with reduced number of free institutions, which excludes citizens even more, especially those in vulnerable conditions⁽²⁷⁾.

It is importantly to highlight that, the 3,548 long-term care facilities for the elderly that were counted, are located in only 29.9% of the cities and have 109,447 beds, out of which approximately 90% are occupied⁽¹⁾. Therefore, one can infer that these institutions are working almost at full capacity and that 70% of Brazilian cities do not have long-term care facilities for the elderly.

The standards, laws and resolutions are good, but not good enough to change by themselves the reality or the identity of long-term care facilities for the elderly⁽³⁾. If institutions are not seen as a last alternative care - prioritizing the cases of greater dependence and fragility and that using other forms of care such as day centers, social support network and especially that evaluating new strategies to promote care - the demand for long-term care facilities for the elderly will continue to grow⁽²⁷⁾.

Then, one should also consider that the full care for the elderly, in addition to a physical structure of operation, requires a multidisciplinary team with broad vision and interdisciplinary approach, which is not always what the legal apparatus ensures, because when care is redirected, costs fall on the

elderly people themselves. Many elderly Brazilians still lack basic resources to provide for their needs, even in the absence of illnesses and when they are institutionalized, with greater care demand costs, who bears these costs? This mismatch between the legal and formal plans raises wider debate taking into account the social reality that pervades our daily lives.

Conclusion

In the historical perspective of policies for the elderly, one sees progress in establishing mechanisms to ensure health actions, as well as the dignity of these human beings. It is important to highlight that regardless of the adopted content, a point is common in all legislation, the assumption that long-term care facilities for the elderly is a care alternative when family's and the community's support fail. The statement drawn up in different legal instruments that the elderly have the right to decent housing, within their natural or surrogate families, or unaccompanied by their families when they wish, either in public or in private institution does not constitute in ensure that this will actually happens.

The demographic reality directs one to the fact that the need for places in long-term care facilities for the elderly is growing, as the number of elderly people requiring care has increased. This care traditionally offered by family members, is in a process of change, among others, as a reflex of new family arrangements, which indicates that many older people may reside in institutions, which requires from these institutions resources to meet their demands.

In this context, the legal framework provides the tools for standardization and working, however, concerning the generation of resources to provide long-term care, society and the government are still on the verge of obtaining effective responses and this is a great challenge. The exercise of thinking this question as a social and public policy is everybody's duty.

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Lini EV and Portella MR contributed to the conception and design, analysis and interpretation of data and writing of the article. Santos MIPO and Doring M contributed to relevant critical review of the intellectual content and final approval of the version to be published.

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