

International Journal of **Health Science**

INTERMUNICIPAL CONSORTIUMS - ESPECIALLY IN THE SCOPE OF HEALTH

Adelcio Machado dos Santos

Herneus João de Nadal

Anderson Antonio Mattos Martins

All content in this magazine is licensed under a Creative Commons Attribution License. Attribution-Non-Commercial-Non-Derivatives 4.0 International (CC BY-NC-ND 4.0).



Abstract: Municipalities can form consortium to jointly develop the actions and services that are convenient for them, in accordance with regulatory provisions. Therefore, public consortium consist of the union between non-profit entities of the federation, with the purpose of providing services and developing joint actions aimed at the collective interest and public benefits. These entities can associate when constituted by the same sphere of government (horizontal form) or vertically, when constituted by entities from different spheres. Such entries have acquired relevance, and must deserve attention from managers and researchers, especially in the health area. It is an introductory approach, of a doctrinal character, mainly normative.

Keywords: Consortium; County; Health.

INTRODUCTION

Public Administration tends to evolve with society, incorporating new instruments that can enable the achievement of its objectives. Thus, it is necessary to accept the innovations that contribute to the Public Administration to improve its instruments. From this perspective, it is not a neutral phenomenon, but, on the contrary, incorporates new techniques of structure and action.

Thus, regarding Teixeira et al. (2002, p. 16), offer the following contribution:

The advance of the decentralization process and the municipalization of health reinforced the need to organize the management of the health services system (micro-regionalization) and to seek forms of association that allowed overcoming deficiencies in scale and availability of resources (consortium). The provision of health services through consortium must, however, be uncertain in a regulatory and organizational context that establishes rules for their operation and thus allows them to maximize their gains. Therefore, the existence of these two complementary mechanisms suggests the study to investigate

how both can be used to increase the efficiency, in Brazil, of health expenditures. More specifically, it is important to understand that incentive problems can occur in a regionalization process,

Among the administrative innovations, the institute of the consortium stands out, when federative entities sign commitments to, in communion, promote better and greater service provision.

First of all, however, it is necessary to adopt a construct about the phenomenon under analysis. In this regard, Law Number: 11,107, of April 6, 2005, provides for “general rules for contracting public consortium and other provisions”;

Article 1 This Law provides for general rules for the Union, the States, the Federal District and the Municipalities to contract public consortium for the achievement of objectives of common interest and other provisions.

Furthermore, it is worth mentioning the provisions of the Magna Carta:

Article 241 The Union, the States, the Federal District and the Municipalities will regulate, by law, public consortium and cooperation agreements between federated entities, authorizing the associated management of public services, as well as the total or partial transfer of charges, public services, as well as the total or partial transfer of charges, services, personnel and essential goods for the continuity of the transferred services.

Lima (2000, p. 986) provides the following light:

“Consortium, from the Latin *consortium*, implies the idea of association, connection, union and, in the context of inter-municipal relations, nothing more appropriate than the formation of entities aiming at the study, monitoring, diagnosis of solutions that, as a rule, they involve neighboring municipalities and with problems that are identified in an increasingly increasing order, due to the strong demand of those administered.

The formation of a consortium does not obey a single logic, but the interests and availability of a given region, conforming to different modes of action and allowing its improvement, inclusion or not of municipalities, a grouping of municipalities that, by the logic of proximity, may not belong to the state/headquarters of the consortium.

From another point of view, it is known that the right to health is provided for in the Charter, in the terms set out below.

Article 6 Social rights are education, health, food, work, housing, transport, leisure, security, social security, protection of motherhood and childhood, assistance to the destitute, in the form of this Constitution.

(...)

Article 196. Health is everyone's right and a duty of the State, guaranteed through social and economic policies aimed at reducing the risk of disease and other aggravations and at universal and equal access to actions and services for their promotion, protection and recovery.

Thus, in view of this state commitment, the possibility of forming inter-municipal administrative consortium appears as an alternative to mitigate health problems.

RESULTS AND DISCUSSION

Constitutional Amendment Number: 19, of 06/04/1988, recognized the figure of Public Consortium as the legal entities governed by public law.

In addition, it introduced the new concept of associated management of public services, through which an entity of the Federation can cooperate with other entities for the execution of planning, regulation, inspection actions or for the provision of public services, as follows :

Article 241. The Union, the States, the Federal District and the Municipalities shall regulate, by law, public consortium and cooperation agreements between

federated entities, authorizing the associated management of public services, as well as the total or partial transfer of charges, services, personnel and goods essential to the continuity of the transferred services.

Law number: 8,080, of 1990, provides for the conditions for the promotion, protection and recovery of health, the organization and operation of the corresponding services and, in its Article 18, item VII, provides for the formation of said consortium.

The Municipalities were allowed to form consortium to jointly develop the actions and services that suit them, as provided for in Article 10, § 1 and 2 of the aforementioned Law:

Article 10. Municipalities may form consortium to jointly develop the actions and health services that correspond to them.

§ 1 The principle of single management applies to inter-municipal administrative consortium, and the respective constitutive acts shall provide for their observance.

§ 2 At the municipal level, the Unified Health System (SUS) may be organized into districts in order to integrate and articulate resources, techniques and practices aimed at the total coverage of health actions.

Therefore, public consortium consist of the union between non-profit entities of the federation, with the purpose of providing services and developing joint actions aimed at the collective interest and public benefits.

These entities can associate when constituted by the same sphere of government (horizontal form) or vertically, when constituted by entities from different spheres.

Public consortium are governed by Federal Law Number: 11,107/2005, which provides for general contracting rules, being the first Brazilian law of federative cooperation.

With the advent of the law, municipalities and states have much to gain, since it opens up the possibility of joint actions that provide

the strengthening of local political spheres, as their performance can be enhanced by cooperation.

It can be said that the main objective of the constitution and maintenance of a consortium is the optimization of municipal and regional public management, through greater political sensitivity by approaching the reality of citizens. Also strengthening the region in negotiations with the Federal and State Government for the acquisition and transfer of resources.

It is also important to mention that the law establishes the obligation to create a legal entity to constitute a consortium, which can be established in two ways, the first being - Public Consortium of Public Law - are public associations of an autonomous nature that must comply with all principles of public administration and that can sign contracts and receive regional and union resources and, the second - Public Consortium of Private Law - can adopt the form of association or foundation.

In Santa Catarina, the municipalities gathered in 15 inter-municipal health consortium, as follows:

This work is directed to the Intermunicipal Health Consortium, true alternatives that are offered to the Public Administration.

At the outset, it is worth mentioning the Alto Vale do Rio do Peixe Consortium (CIS/AMARP), and it is based on audits carried out by the Court of Auditors of the State of Santa Catarina, through its Competent Boards (RLI process 18/00906827).

CIS/AMARP is a public association that aims to order the use of available resources and reinforce the role of the municipality in the modernization of public management, in compliance with Law Number: relevant municipal legislation.

The municipalities that comprise it are: Água Doce, Arroio Trinta, Caçador,

Calmon, Capinzal, Catanduvas, Erval Velho, Fraiburgo, Herval D'Oeste, Ibiam, Ibicaré, Iomerê, Joaçaba, Lacerdópolis, Lebon Régis, Luzerna, Macieira, Matos Costa, Pinheiro Preto, Rio das Antas, Salto Veloso, Tangará, Timbó Grande, Treze Tílias, Vargem Bonita and Videira (headquarters).

Its purpose is to represent the set of municipalities that comprise it, in health matters of common interest, before other spheres of Government and before any public or private, national or international entities; ensure the provision of health services in a supplementary and complementary nature to the population of the consortium municipalities, in accordance with SUS guidelines and in an efficient and effective manner, whenever such services cannot be provided directly by the municipality; create instruments for the control, monitoring and evaluation of health services provided to the population; to develop and execute services and activities of interest to the consortium municipalities in accordance with the projects and work programs approved by CIS/AMARP; enable joint actions in the area of purchase and/or production of equipment, Article 6 of the Cisamarp Statute and Article 6 of the Protocol of Intent signed between the municipalities that are part of Cisamarp).

The Consortium is financed through an apportionment agreement, which defines the economic and financial responsibilities of each consortium member and the form of transfer of each participant.

In the light of Ariane Fucci Wady's teaching, apportionment contract is a contract entered into by Political Entities, in the context of a public consortium contract, aiming at that the resources acquired with the provision of public service, object of the consortium, be apportioned among the Entities Consortium publics, as provided for in Article 8, § 1, of law 11107/05.

In light of data from the aforementioned process, the CIS/AMARP, according to the entity's Information Access Portal on page <https://lai.fecam.org.br/cisamarp>, integrates the public health network of the 26 consortium municipalities, covering a population of 344,853 inhabitants.

The Santa Catarina Court of Auditors analyzed the associated management of public health services specifically in relation to meeting the demand by the Unified Health System (SUS), in the municipalities of Caçador and Videira, in order to ascertain whether their activities were being controlled and supervised.

Both irregularities and problems were observed in the management of the regulatory systems of the municipalities visited, as well as the interrelationship with the state system, this way, Decision 638/2020 of the TCE/SC, was to carry out an operational audit, as well as regularity, in the health regulation system of municipalities and within the state of Santa Catarina.

In the RLA Process 19/00650280 within the scope of the TCE/SC, an audit is being carried out at the Intermunicipal Health Consortium of Extremo Sul Catarinense (CIS-AMESC), in order to verify the regularity of the accounting records and the expenses incurred by the Entity.

According to article 1 of its Statute, CIS-AMESC is a non-profit civil society governed by private law, governed by the Civil Code.

The public power can transfer resources to private entities so that some purposes of common interest are developed. The funds from the public purse, in these cases, do not lose their public nature.

Although it is a private person that is not part of the public administration, CIS-AMESC works in parallel with the consortium municipalities and uses public funds, it is imperative that it values the proper use of

public money, as well as regular accountability.

The TCE/SC, among its competences, is proactively inclined in the analysis of these factors, without conclusive results, so far.

A last case to be reported concerns the Intermunicipal Health Consortium of the West of Santa Catarina (CIS-AMOSC) which was founded in July 1996.

However, according to data from the process, in 2008 it was framed in the new legislation, being constituted in the form of a public association with legal personality of public law and autarchic nature, becoming a public consortium, governed by the provisions of the Constitution of the Federative Republic of Brazil, Law (federal) number: 11.107/05, Decree (federal) number: 6.017/07, Law (federal) number: 8.080/90 (Organic Health Law), Law (federal) number: 8.142/90 and by the Protocol of Intent.

The CIS-AMOSC is made up of several municipalities subscribed to the protocol of intentions ratified by the respective Municipal Councils of Councilors, whose representation takes place through the municipal mayor.

According to data from the aforementioned process, CIS-AMOSC has 53 affiliated municipalities, in a population of more than 562,000 inhabitants. It has approximately 240 accredited professionals in the most diverse specialties and several municipalities in Santa Catarina, Paraná and Rio Grande do Sul.

The purpose of the TCE/SC's performance in this consortium was to verify the regularity of the expenses incurred by the Entity in the year 2017, as well as the execution of the programs signed by the Consortium, the fulfillment of agreed goals and the achievement of the stipulated results.

Irregularities and failures were found, meanwhile, the final result was regularity, with reservations (Decision TCE/SC Number: 662/2019).

FINAL CONSIDERATIONS

Health constitutes a fundamental right of the human being, and the State's duty to provide the indispensable conditions for its full exercise.

Health actions and services must be provided by public bodies and institutions in the three spheres of administration, however, if there is a lack in the provision of public health services, these can be provided by the private sector, in a complementary manner, which may participate in the Unified System of health. To this end, the executive branch has the duty to manage the supply (public and private) to fully meet the demand through systems of control and regulation of access to health.

Thus, as a way of mitigating such demands, Public Consortium emerged which, from the 1990s onwards, became an important instrument of public policy for economic development and improvements in the health, sanitation, environment, among others.

Through the Consortium, municipalities can carry out, in an agile and simplified way, joint activities in the health area, among others, seeking to reduce the costs of care in the sector.

Despite the facilities provided by the consortium, the competence of the municipalities to act in Primary Health Care cannot be substituted, as it is an essential public service and a core activity of the Public Power.

The functioning of the public health service is an obligation of the State, with the complementary participation of private entities. Thus, the transfer of such services to the consortium must be conducted in a public, objective and impersonal manner, respecting the rules that govern the matter.

Finally, the challenge remains constant, so that the beneficiaries of these services can have the perception of the expansion and improvement of the quality of the services provided through the Intermunicipal Health Consortium.

REFERENCES

ABNT. **ABNT NBR 6028**: informação e documentação – Resumo – Apresentação. Rio de Janeiro, 2003.

ABNT. **ABNT NBR 10520**: apresentação de citações em documentos. Rio de Janeiro, 2002.

BRASIL. [Constituição (1988)]. **Constituição da República Federativa do Brasil**. Organizado por Cláudio Brandão de Oliveira. Rio de Janeiro: Roma Victor, 2002.

LIMA, A. P. G. Os consórcios intermunicipais de saúde e o Sistema Único de Saúde. **Cad. Saúde Pública**, v. 16, n. 4, p. 985-996, 2000. Disponível em: <https://www.scielo.br/j/csp/a/jWHZPRpnJvpXpghpX4v83SJ/?format=pdf&lang=pt>. Acesso em: 20 jun. 2021

TEIXEIRA, L. MAC DOWELL, M.C.; BUGARIN, M. **Incentivos em consórcios intermunicipais de saúde**: uma abordagem da teoria de contratos. n. 894. Brasília: IPEA, 2002. Disponível em: https://www.ipea.gov.br/portal/images/stories/PDFs/TDs/td_0894.pdf. Acesso em: 20 jun. 2021.