

“Insuring” prioritisation and parity: Comparing approaches to telemental health in the law

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Focusing on reimbursement parity, this research compares laws governing telemental health care in France, Australia and the Netherlands.

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INTRODUCTION

Mental health is critical to the discussion of eHealth’s future, as mental health concerns contribute to the global non-communicable disease epidemic. The effects of mental ill-health have consequences not only for individual health and wellness but also for society’s wellbeing. Mental health conditions, including depression, anxiety and substance use, affect one in six Europeans and one in five Americans.^{1,2} The European Commission has identified mental health as a priority agenda item, not only because of mental ill health’s prevalence but also because of its costs. The Organisation for Economic Cooperation and Development (OECD) approximates the economic toll of mental health disorders in the European Union (EU) at €600 billion, a sum reflecting the steep costs of care, social benefits and loss of productivity.³ Mental health also carries high human costs; in 2015 alone, at least 84,000 EU citizens died from mental health-related causes.⁴

Today, telemental health technologies offer the potential to promote prevention and purvey quality care. When discussing the practice of telemental health, this paper refers to psychological or psychiatric services delivered via telecommunication technologies.⁵ Using video conferencing, computer programs and smartphone applications, mental health professionals can consult with and prescribe medication to patients, thus meeting the high demand for care. Preliminary studies evidence successful telemental health treatment and

¹ OECD, ‘Mental Health Problems Costing Europe Heavily’ (OECD 2018) <<http://www.oecd.org/health/mental-health-problems-costing-europe-heavily.htm>> accessed 19 April 2019.

² Centers for Disease Control & Prevention, ‘Learn About Mental Health’ (2018). <<https://www.cdc.gov/mentalhealth/learn/index.htm>> accessed 19 April 2019.

³ OECD, ‘Mental Health Problems Costing Europe Heavily’ (OECD 2018) <<http://www.oecd.org/health/mental-health-problems-costing-europe-heavily.htm>> accessed 19 April 2019.

⁴ OECD, *Health at a Glance: Europe 2018 : State of Health in the EU Cycle*. (OECD Publishing 2018).

⁵ American Psychological Association, ‘Guidelines for the Practice of Telepsychology’ <<https://www.apa.org/practice/guidelines/telepsychology>> accessed 19 April 2019.

indicate the potential for future applications and implementation.^{6,7} A study of telemedical insurance claims in the United States reveals that, while telemedicine use generally has increased over time, the highest increases in telemedicine services from 2005–2017 were either for telemental health care or primary healthcare, with a high demand for such services coming from rural regions.⁸ The nature of telemedical technology means it is well suited to mental and behavioural healthcare delivery, which infrequently requires physical examinations or biological sample collection. This, combined with clinical effectiveness, has encouraged providers to increasingly embrace telemental health as part of their practices.⁹ Realising the potential and demand for such services, governments have begun authorising and supporting the use of telemental health. However, without access afforded by insurance coverage, patients may not benefit from the potential of telemental health practice.

The reimbursement status of telemental health in the legal order remains unclear. In the process of developing unique approaches to telehealth regulation, some nations have opted to regulate telemental health services broadly under a catch-all telemedicine policy, while others treat the services singularly as their own category of law. Using a comparative approach, this research explores laws governing telemental healthcare reimbursement practice in France, Australia and the Netherlands. Beyond cataloguing the defining features of telemental health laws, this research analyses laws governing insurance compensation for telemental health services, with a particular focus on reimbursement parity with traditional mental health services.

WHAT IS TELEMENTAL HEALTH PARITY?

Mental health treatment parity, the concept that insurers should reimburse mental health services no more or less favourably than they would services for any other physical health condition, is an important lens through which to view telemental health services. In this research, I take achieving telemental health parity to mean that health systems reimburse telemental health services at the same rate as standard mental health services.

⁶ Donald Hilty and others, 'The Effectiveness of Telemental Health: A 2013 Review.' (2013) 19 *Telemedicine journal and e-health* : the official journal of the American Telemedicine Association 444 <<http://www.ncbi.nlm.nih.gov/pubmed/23697504>> accessed 19 April 2019.

⁷ Donald Hilty and others, 'Telepsychiatry: Effective, Evidence-Based, and at a Tipping Point in Health Care Delivery?' (2015) 38 *Psychiatric Clinics of North America* 559 <<http://www.ncbi.nlm.nih.gov/pubmed/26300039>> accessed 19 April 2019.

⁸ Michael Barnett and others, 'Trends in Telemedicine Use in a Large Commercially Insured Population, 2005-2017' (2018) 320 *Journal of the American Medical Association* 2147 <<http://www.ncbi.nlm.nih.gov/pubmed/30480716>> accessed 19 April 2019.

⁹ Epstein Becker & Green, 'Telemental/Telebehavioral Health' <<https://www.ebglaw.com/telemental-telebehavioral-health/>> accessed 19 April 2019.

Debate exists over whether telehealth parity is the right policy choice in general. Parity incentivises telehealth growth by encouraging both provider and patient uptake; this is because making services financially accessible encourages their use.¹⁰ If the diversity of reimbursable health services increases, this provides incentives for increased telehealth infrastructure. Studies have demonstrated that parity can drive utilisation and have revealed potential to disincentivise telehealth uptake in states without parity laws.¹¹ Critics of telehealth parity argue that providers should not reimburse telehealth services at the same rate as in-person care because of the costs savings that streamlined, remote services can generate.^{12, 13} Proponents rebut that if telehealth reimbursement practices do not match in-person provision, projected cost savings will be lost, as providers will encourage in-person visits to generate lost revenue and have little incentive to invest in telehealth infrastructure.^{14, 15}

REIMBURSING TELEMENTAL HEALTH: COMPARING THE LAW IN FRANCE, AUSTRALIA AND THE NETHERLANDS

This analysis consists of systematic comparative inquiry into the definition of telemental health, reimbursement parity practice and the distinct features of telehealth law in France, Australia and the Netherlands. Three key criteria guided the comparison country selection. First, all jurisdictions permit general telehealth practice. Second, each has a universal health coverage system. The third criterion narrows the countries to those that have made recent policy changes to telehealth and telemental health care delivery. The research included only public insurance schemes and sought to inquire only into mental health care pertaining to mild to moderate disorders treated by outpatient therapy.

Definitions

Each of the French, Australian and Dutch legal orders approach defining telemental health differently, if at all. While the French Public Health Code does not explicitly define telemental health practices, telemental health services could fall under the code's general definitions of telemedicine and teleconsultation. In France, telemedicine is "a form of

¹⁰ Jillian Harvey and others, 'Utilization of Outpatient Telehealth Services in Parity and Nonparity States 2010–2015' (2019) 25 *Telemedicine and e-Health* 132 <<https://www.liebertpub.com/doi/10.1089/tmj.2017.0265>> accessed 19 April 2019.

¹¹ Ibid.

¹² Y. Tony Yang, 'Telehealth Parity Laws' [2016] *Health Affairs* <<https://www.healthaffairs.org/doi/10.1377/hpb20160815.244795/full/>> accessed 19 April 2019.

¹³ Ateev Mehrotra, 'Telemedicine: Promise vs Reality' (Executive Education at Harvard Medical School 2019) <<https://executiveeducation.hms.harvard.edu/telemedicine-promise-vs-reality/>> accessed 19 April 2019.

¹⁴ Y. Tony Yang, 'Telehealth Parity Laws' [2016] *Health Affairs* <<https://www.healthaffairs.org/doi/10.1377/hpb20160815.244795/full/>> accessed 19 April 2019.

¹⁵ Ateev Mehrotra, 'Telemedicine: Promise vs Reality' (Executive Education at Harvard Medical School 2019) <<https://executiveeducation.hms.harvard.edu/telemedicine-promise-vs-reality/>> accessed 19 April 2019.

remote medical practice using information and communication technologies. It connects, among themselves or with a patient, one or more health professionals, including necessarily a medical professional and, where appropriate, other professionals providing care to the patient. ...It makes it possible to establish a diagnosis, to ensure, for a patient at risk, preventive follow-up or post-therapeutic follow-up, to request a specialised opinion, to prepare a therapeutic decision, to prescribe products, to prescribe or to perform services or acts, or monitor the condition of patients¹⁶...” The French Public Health Code also elaborates and defines each of the telemedicine practices permitted in France, including teleconsultation, which “is intended to allow a medical professional to give a remote consultation to a patient¹⁷”.

While the Australian legislation does not explicitly define telemental health, Australia’s Medicare Benefits Schedule requires a reimbursable video consultation to have both a visual and audio link between the patient and the remote care provider. This formulation makes clear that email or other internet messaging does not qualify for reimbursement. Finally, while some generally accepted definitions of eHealth exist,^{18, 19, 20} telemental health appears to have no operational definition in Dutch law.

Telemental health parity

Telemental health parity operates explicitly in France. French law specifically ensures parity, stating in legislation that teleconsultation will be compensated at the same rate as in-person visits.^{21, 22} As the national health insurance system compensates both standard mental health and telemental health consultations at a rate of 70%²³, parity exists between the practices.^{24, 25}

¹⁶ Code de la santé publique - art. L6316-1.

¹⁷ Ibid.

¹⁸ Raad voor Volksgezondheid en Samenleving, ‘Consumer EHealth’ <<https://www.raadrvs.nl/documenten/publications/2015/4/21/consumer-ehealth>> accessed 19 April 2019.

¹⁹ Nederlandse Zorgautoriteit, Beleidsregel huisartsenzorg en multidisciplinaire zorg 2019 - BR/REG-19133 <https://puc.overheid.nl/nza/doc/PUC_236497_22/1/#result_4>.

²⁰ GGZ Nederland (Dutch Association of Mental Health and Addiction Care), ‘E-Mental Health in the Netherlands’ <<https://www.ggz nederland.nl/uploads/assets/Factsheet%20e-mental%20health%20in%20the%20Netherlands%20def.pdf>> accessed 19 April 2019.

²¹ Sécurité Sociale l'Assurance Maladie, ‘La Téléconsultation’ (Sécurité Sociale l'Assurance Maladie, 2019) <<https://www.ameli.fr/assure/remboursements/rembourse/telemedecine/teleconsultation>> accessed 19 April 2019.

²² Sécurité Sociale l'Assurance Maladie, ‘Consultations En Métropole : Vos Remboursements’ (Sécurité Sociale l'Assurance Maladie, 2019) <<https://www.ameli.fr/assure/remboursements/rembourse/consultations/metropole>> accessed 19 April 2019.

²³ Seventy percent is the applicable reimbursement rate, so long as the patient accesses services through coordinated care pathways or has otherwise declared a care provider.

²⁴ Sécurité Sociale l'Assurance Maladie, ‘La Téléconsultation’ (Sécurité Sociale l'Assurance Maladie, 2019) <<https://www.ameli.fr/assure/remboursements/rembourse/telemedecine/teleconsultation>> accessed 19 April 2019.

²⁵ Sécurité Sociale l'Assurance Maladie, ‘Consultations En Métropole : Vos Remboursements’ (Sécurité Sociale l'Assurance Maladie, 2019). <<https://www.ameli.fr/assure/remboursements/rembourse/consultations/metropole>> accessed 19 April 2019.

While Australia does not explicitly enshrine parity in the law as in France, the Australian system does demonstrate telemental health parity. The Medicare Benefits Office (MBO) states that “[u]nder the Better Access initiative, new items for Telehealth services will be available at the same rebate as the existing ten face-to-face eligible services for allied health providers.²⁶” The tariffs indeed reflect this policy. For instance, MBO reimburses a video consultation of 30–40 minutes in length at a rate of 100%, a rate identical to traditional mental health appointments of the same length.

By integrating eHealth practices into ordinary care, the Netherlands appears to embody “implicit” parity. Parity provisions are not specifically stated in the law. Instead, the Dutch system has deemphasised the distinction between digital and standard care. Because the Netherlands also encourages the use of blended care, which is a mixture of in-person and internet-based interventions²⁷ in mental healthcare, health insurers may reimburse all kinds of eHealth and not just video consultation.²⁸ The Netherlands has also reclassified telephone and email communications as “short” consultations, instead of single billed items, for “the form in which the care is provided... is therefore no longer leading for invoicing, only the time actually spent on patient contact.²⁹” This change evidences how telemental health is implicit in standard care and shows that the care provided is a higher priority than the medium of care delivery.

Distinct features

Unique features of each nations’ telemental health laws are important to highlight. While some of these policies apply to telehealth practice broadly, they also apply to mental health. France’s health code mandates specific knowledge requirements of telemedicine to engage in its practice, requiring that telemedical professionals like psychiatrists and psychologists have adequate skills and training to use the technology.³⁰

Australia’s Better Access programme’s geographic restriction is chief among the parameters of telemental health care access. Better Access allows patients to access telehealth services from “convenient” locations, including their homes, so long as patients “are located in an eligible rural, remote or very remote location... and not within 15

²⁶ Australian Department of Health, ‘Better Access Telehealth Initiative for Rural and Remote Patients Guidelines’ (2019) <[http://www.health.gov.au/internet/main/publishing.nsf/Content/7711F1B8AF63FD55CA2581B50006892D/\\$File/Better Access Telehealth_Guidelines.pdf](http://www.health.gov.au/internet/main/publishing.nsf/Content/7711F1B8AF63FD55CA2581B50006892D/$File/Better%20Access%20Telehealth_Guidelines.pdf)> accessed 19 April 2019.

²⁷ GGZ Nederland (Dutch Association of Mental Health and Addiction Care), ‘E-Mental Health in the Netherlands’ <<https://www.ggznederland.nl/uploads/assets/Factsheet%20e-mental%20health%20in%20the%20Netherlands%20def.pdf>> accessed 19 April 2019.

²⁸ Raad voor Volksgezondheid en Samenleving, ‘Consumer EHealth’ <<https://www.raadrvs.nl/documenten/publications/2015/4/21/consumer-ehealth>> accessed 19 April 2019.

²⁹ Nederlandse Zorgautoriteit, ‘Circulaire vaststelling beleidsregel huisartsenzorg en multidisciplinaire zorg - Cl/18/17c’ <https://puc.overheid.nl/nza/doc/PUC_244606_22/1/>.

³⁰ Code de la santé publique - art. R6316-10.

kilometres by road from their treating professional.³¹ The patient must not be admitted to a hospital or emergency room at the time of consultation.³²

A special feature of the Netherlands' health finance scheme is a device known as the "max-max tariff". Applicable to mental health care, this device allows providers and insurers to contractually agree to increase the maximum rates of health services by 10%³³. Such a device incentivises the adoption of innovative practices like digital healthcare.

REIMBURSING TELEMENTAL HEALTH: CHALLENGES AND FUTURE CONSIDERATIONS

This comparison reveals the many similar and disparate ways in which nations have introduced and implemented telemental health into care systems. All systems here permit telehealth practice more generally, and within that, telemental health practice, whether explicitly or implicitly. In some states, telemental health is treated separately, while in others, like the Netherlands, telemental health is implicitly rolled into standard health practice.

Comparing nations' approaches to telemental health reveals four key challenges that countries encounter when confronting telemental health practice. First, defining the scope of practice is a surmountable challenge. This analysis reveals that there is no standardised definition of telemental health practice among nations. While some of the definitions capture some of the same aspects of telemental health, like the concept of live audio-visual transmission, neither the definitions nor nomenclature of telemental health practice is standard. France does define telemedicine and teleconsultation in a way that encompasses telemental health, but it is one of the only countries to enshrine these parameters into national law. Stakeholders may find it difficult to discuss policy when the scope is ill-defined. Laws should explicitly state that telemental health is specifically included in the umbrella of practice, as this will clarify the law for legal interpreters and demonstrate that mental health is a legislative priority.

Second, health systems must also consider the transition from targeted intervention to broad practice. While Australia's geographic restrictions are an example of how governments can use telemental health restrictions as precision instruments to ensure priority populations receive mental healthcare access, policymakers may eventually seek to expand telemental options to broader populations. In such a transition, health systems must ensure a sufficient supply of qualified health professionals to meet demand.

³¹ Australian Government Department of Health, 'Better Access to Mental Health Care: Fact Sheet for Patients' <<http://www.health.gov.au/internet/main/publishing.nsf/Content/mental-ba-fact-pat>> accessed 19 April 2019.

³² Australian Government Department of Health, 'Better Access to Mental Health Care: Fact Sheet for Professionals' <<http://www.health.gov.au/internet/main/publishing.nsf/Content/mental-ba-fact-prof>> accessed 19 April 2019.

³³ Nederlandse Zorgautoriteit, 'Wat Is Het Max-Max Tarief?' <<https://www.nza.nl/documenten/vragen-en-antwoorden/wat-is-het-max-max-tarief>> accessed 19 April 2019.

Third, telemental health technologies must find their place within existing health system structures. Though these systems were not originally designed with these healthcare practices in mind, each nation has found its own way to incorporate the practices. Varying approaches to finding that place may be one reason for the unique approaches evident in the law today. Because telemental health practice is not a cure-all, but rather a complement to practice, telemental health's legal architecture must reflect its complementary nature. Leaving ample room for future innovation is also a challenge. Holland's max-max tariff provisions highlight the importance of dedicating space in the system to incorporate future innovations in telemental health care.

Finally, in the future, lawmakers must prioritise mental health care in a world replete with digital tools. Should systems treat telemental health the same as other services? Or should it be uniquely prioritised? Can health systems implicitly include it in their offerings? Are priority and parity at odds? This research thus far cannot unequivocally conclude that telemental health parity only exists when it is inscribed in the law. It shows that even if specific parity provisions do not exist, as in Australia or the Netherlands, we can still find evidence of equal treatment. Reimbursement, a symbol of prioritisation, does not always equate to parity. Non-concretised regulation may open the door to disparate compensation in the future. The Dutch approach, where the focus lies on the care provided rather than the medium, could provide a viable solution. But which of these approaches is "best" will only become clear after each policy generates a body of evidence over time.

CONCLUSION

Telemental health practices have the potential to address the developing non-communicable disease epidemic. France, Australia and the Netherlands have each uniquely adopted telemental health care in their benefits schemes. Prioritising treatment and parity in insurance law alone is unlikely to ensure complete uptake of mental health care³⁴, but it is a necessary component of the endeavour. The challenges lie in parsing out who telemental health services cover, what they cover and how health systems deliver that coverage. While this brief analysis is limited, it does shed light on the need to address eHealth's challenges with clarity and precision.

³⁴ Jeongyoung Park and others, 'Are State Telehealth Policies Associated With The Use Of Telehealth Services Among Underserved Populations?' (2018) 37 Health Affairs 2060 <<http://www.healthaffairs.org/doi/10.1377/hlthaff.2018.05101>> accessed 19 April 2019

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Y. Tony Yang, 'Telehealth Parity Laws' [2016] Health Affairs <<https://www.healthaffairs.org/doi/10.1377/hpb20160815.244795/full/>> accessed 19 April 2019.