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The State of Telemental Health Care



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Introduction

Telemental health care appears to be booming for both providers and consumers. Also referred to as “telebehavioral health,” “e-counseling,” “e-therapy,” “online therapy,” “cybercounseling,” or “online counseling,” telemental health care is the provision of remote mental health-care services by a variety of different health-care providers. A combination of factors, including the prevalence of mental illness and a mental health-care provider shortage, is incentivizing

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stakeholders to look for innovative alternative care models to use in lieu of in-person care.

Other factors are also driving the boom in the provision of telemental health-care services. First, telehealth as a care modality is a good fit for providing mental health services because mental health-care providers rarely have to lay hands on their patients, even in the context of conventional face-to-face care encounters. Second, telemental health-care services have been accepted by a large (and growing) number of payers as a legitimate use of telehealth, more so than other telehealth disciplines. Third, virtual mental health care may enhance the quality of the communications between a mental health-care provider and his or her patients by reducing the stigma that sometimes is associated with a patient physically visiting a mental health-care provider. Finally, patients surveyed regarding their use of telemental health-care services have consistently stated that they believe telemental health care is a credible and effective practice of medicine.

Prevalence of Mental Illness in the United States

Mental illness affects millions of individuals in the United States, and contributes significantly to the burdens of disease. It can be recurrent, as well as serious, but often is treatable, provided individuals have access to the necessary treatment.

In 2014, according to the Substance Abuse and Mental Health Services Administration (“SAMHSA”), approximately 43 million American adults—about one in every five adults aged 18 or older—suffered from some mental illness.¹ A subset of approximately 10 million American adults—about one in every 25—suffered from a “serious mental illness,” defined as a mental illness that substantially interferes with or limits one or more

¹ U.S. Department of Health & Human Services, Substance Abuse and Mental Health Services Admin., *Behavioral Health Trends in the United States: Results from the 2014 National Survey on Drug Use and Health* (Sept. 2015), available at <http://www.samhsa.gov/data/sites/default/files/NSDUH-FRR1-2014/NSDUH-FRR1-2014.pdf>. SAMHSA's National Survey on Drug Use and Health focuses on the use of illegal drugs, alcohol, and tobacco, and includes modules that focus on mental health issues.

major life activities. Examples of serious mental illnesses are schizophrenia, bipolar disorder, and major depression.

According to statistics summarized in a report from the National Alliance on Mental Illness (“NAMI”), the situation is more acute:²

- One in four American adults (about 61 million Americans) experiences mental illness in a given year.
- One in 17 Americans (about 14 million) lives with a serious mental illness.
- Approximately 20 percent of youth ages 13 to 18 experience severe mental disorders in a given year.
- Only 41 percent of adults with a mental health condition received mental health-care services in the past year.
- Suicide is the 10th leading cause of death in the U.S. and the third leading cause of death for people aged 10 – 24.

Despite such significant prevalence of mental illness, the American health-care system has not yet adequately responded to the *burdens* of mental illness.

Shortage of Mental Health-Care Providers

Exacerbating the mental health crisis is the critical shortage of mental health-care providers, creating significant access to care issues. The statistics are daunting:

- Only 40 percent of Americans with mental illness report receiving treatment.
- According to Mental Health America’s latest report on mental health, there is only one mental health-care provider for every 566 people in the country.³
- There are approximately 4,000 mental health Health Professional Shortage Areas (“HPSAs”), an estimate that is based on a psychiatrist-to-population ratio of 1:30,000. That means it would take approximately 3,000 additional psychiatrists to eliminate the current mental health HPSA designations.⁴
- A report to Congress found that 55 percent of the nation’s 3,100 counties have no practicing psychiatrists, psychologists, or social workers.

² Nat’l Alliance on Mental Illness, *Mental Health by the Numbers*, available at <http://www.nami.org/Learn-More/Mental-Health-By-the-Numbers>.

³ Mental Health America, *The State of Mental Health in America 2016*, available at <http://www.mentalhealthamerica.net/sites/default/files/2016%20MH%20in%20America%20FINAL.pdf>.

⁴ Health Resources and Services Admin., *Shortage Designation: Health Professional Shortage Areas & Medically Underserved Areas/Populations*, available at <http://www.hrsa.gov/shortage/>.

Mental Health Parity

Mental health parity refers to the notion of equal treatment by insurance plans of mental health and substance abuse conditions as compared to treatments available for more conventional medical conditions. Two federal laws have been passed that attempt to address the issue of mental health parity. First, in 2008, Congress passed the Mental Health Parity and Addiction Equity Act (“MHPAEA”). MHPAEA applied to large group plans and required those plans that offered coverage for mental health and substance abuse conditions to ensure that such benefits did not differ from those benefits provided for medical/surgical conditions.⁵ For example, under MHPAEA, deductibles, co-payments, and coinsurance could not be higher for mental health or substance abuse conditions than for medical/surgical conditions.

The second of these federal laws, the Patient Protection and Affordable Care Act of 2010 (“ACA”), extended MHPAEA requirements to individual and small group plans. More significantly, ACA included mental health and substance use disorder benefits as one of the 10 categories making up the essential health benefits that are required for all health plans available to consumers via the exchanges.⁶

Even with the implementation of these mental health parity laws, however, coverage and cost of mental health care remains an issue. A report by NAMI focusing on mental health parity identified a number of barriers facing individuals with mental illness, including serious problems with finding mental health-care providers in health insurance plan networks, and high rates of denials of authorization for mental health and substance abuse services by insurers.⁷

Telemental Health Care Bridging the Gap

Given the significant issues impacting access to and provision of mental health-care services, telemental health care is increasingly being viewed as an alternative to bridging the existing care gap. The federal government provides a clear example:

The Veterans Health Administration (“VHA”) has long used telemental health-care services to provide mental health services to military veterans. In 2010, VHA established a National Telemental Health Center and, in 2013, that Center facilitated nearly 3,000 video-conference encounters to 1,000 patients at 53 sites in 24 states.⁸ The scope of the services the Center addresses includes all mental health conditions, with a particular focus on PTSD, depression, and bipolar disorder.

⁵ Nat’l Alliance on Mental Illness, *A Long Road Ahead: Achieving True Parity in Mental Health and Substance Use Care* (April 2015), available at <https://www.nami.org/About-NAMI/Publications-Reports/Public-Policy-Reports/A-Long-Road-Ahead/2015-ALongRoadAhead.pdf>; see also, The Ctr. for Consumer Information & Insurance Oversight, *The Mental Health Parity and Addiction Equity Act*, available at https://www.cms.gov/CCIIO/Programs-and-Initiatives/Other-Insurance-Protections/mhpaea_factsheet.html.

⁶ 10 Health Care Benefits Covered in the Health Insurance Marketplace (Aug. 22, 2013), available at <https://www.healthcare.gov/blog/10-health-care-benefits-covered-in-the-health-insurance-marketplace/>.

⁷ See *supra* note 15.

⁸ A. Darkins, *Telehealth Services in the United States Department of Veterans Affairs (VA)*, Veterans Health Admin.

Outside of the services provided by the Center, VHA also has provided a large variety of other telemental health-care services:

- Since 2003, VHA has facilitated more than 1.1 million patient encounters from 150 facilities to 729 community based outpatient clinics (“CBOCs”), representing a 23-fold increase in consultations over the years.
- In 2013, VHA delivered more than 278,000 patient encounters to more than 91,000 patients from 150 VA Medical Centers and 729 CBOCs.
- In 2013, chronic disease management services provided via telehealth devices supported 7,430 patients with chronic mental health conditions in their homes, and an additional 2,284 patients had video-based telemental health-care consultations while in their homes, allowing all of these patients to live independently.

Other Examples

Beyond the U.S. Department of Veterans Affairs, other health-care providers and systems are increasingly embracing the use of telemental health-care services as part of the care continuum. The South Carolina Department of Mental Health and the South Carolina Hospital Association, with funds from the Duke Endowment, established a statewide telepsychiatry network that allows patients, emergency department physicians, and psychiatrists to communicate via video-based and wireless communications. Since its inception, the program has resulted in an estimated cost savings of nearly \$30 million.⁹ Separately, regional psychiatric networks have also been formed in North Carolina through funding by the Duke Endowment.¹⁰ These developments are mirrored across the country. Universities are establishing their own telepsychiatric programs,¹¹ prisons are increasingly incorporating the use of telemental health-care services to treat inmates,¹² and the use of home-based telemental health-care services is rapidly on the rise.

(2014), available at <http://c.ycmdn.com/sites/www.hisa.org.au/resource/resmgr/telehealth2014/Adam-Darkins.pdf>.

⁹ South Carolina Department of Mental Health, *Emergency Department Telepsychiatry Program*, available at <http://www.state.sc.us/dmh/telepsychiatry/index.htm>; C. Vestal, *Getting Rural Patients Psychiatric Help Fast*, The Pew Charitable Trusts (June 26, 2014), available at <http://www.pewtrusts.org/en/research-and-analysis/blogs/stateline/2014/06/getting-rural-patients-psychiatric-help-fast>.

¹⁰ C. Vestal, *Getting Rural Patients Psychiatric Help Fast*, The Pew Charitable Trusts (June 26, 2014), available at <http://www.pewtrusts.org/en/research-and-analysis/blogs/stateline/2014/06/getting-rural-patients-psychiatric-help-fast>.

¹¹ Univ. of Maryland School of Medicine, Department of Psychiatry, *TeleMental Health*, available at <http://medschool.umaryland.edu/psychiatry/TeleMental.asp>.

¹² S.A. Deslich, T. Thistlethwaite & A. Coustasse, *Telepsychiatry in Correctional Facilities: Using Technology to Improve Access and Decrease Costs of Mental Health Care in Underserved Populations*, PERM J. 17(3) at 80–86 (Summer 2013), available at <http://www.ncbi.nlm.nih.gov/pmc/articles/PMC3783076/>.

Studies Demonstrate the Efficacy of Telemental Health Care

Recent studies have demonstrated the effectiveness of telemental health-care services. One recent study showed that providing telemental health-care services to patients living in rural and underserved areas significantly reduced psychiatric hospitalization rates.¹³ Another recent study concluded that the effects of receiving telemental health-care services on low-income homebound older adults were sustained significantly longer than those who received the same services in-person.¹⁴ Other studies have arrived at the same conclusion. The Center for Connected Health Policy, a leading national telehealth research organization that also serves as the federally designated National Telehealth Policy Resource Center, has catalogued telemental health-care studies published in peer-reviewed journals.¹⁵

Trends in Telemental Health Care That Could Drive Growth

There are a number of trends that could further fuel growth in telemental health-care services. Here are a few:

New Technology

Development of new technologies is also driving a boom in the use of telemental health-care services. For example, there has been a significant increase in the number of mobile health applications related to mental health services, with recent estimates suggesting that approximately 6 percent of all mobile health applications developed are focused on providing mental health services to users, while another 11 percent of mobile health applications developed are devoted to providing stress management services to users.¹⁶ Additionally, companies have started providing so-called “text therapy” services that allow users, for a flat-rate fee, to text chat with various types of licensed mental health professionals.¹⁷

Licensure Compacts

One of the significant barriers for telemental health care is licensure of providers in multiple states. The use

¹³ L. Godleski, A. Darkins & J. Peters, *Outcomes of 98,609 U.S. Department of Veterans Affairs Patients Enrolled in Telemental Health Services, 2006–2010*, PSYCHIATRY ONLINE 63(4) (April 2012), available at <http://ps.psychiatryonline.org/doi/abs/10.1176/appi.ps.201100206>.

¹⁴ N.G. Choi, C.N. Marti, M.L. Bruce, et al., *Six-Month Postintervention and Disability Outcomes of In-Home Telehealth Problem-Solving Therapy for Depressed, Low-Income Homebound Older Adults*, DEPRESS ANXIETY 31(8) at 653–661 (Aug. 2014), available at <http://www.ncbi.nlm.nih.gov/pubmed/24501015>.

¹⁵ Ctr. for Connected Health Policy, *Telemental Health Research Catalogue and Quality Assessment* (Aug. 2014), available at <http://cchpca.org/sites/default/files/resources/Telemental%20Health%20Research%20Catalogue.pdf>.

¹⁶ M.L. East & B.C. Havard, *Mental Health Mobile Apps: From Infusion to Diffusion in the Mental Health Social System*, JMIR MENTAL HEALTH 2(1) (March 31, 2015), available at <http://mental.jmir.org/2015/1/e10/>.

¹⁷ J. Fruhlinger, *All-You-Can-Text Therapy Services*, WALL ST. J. (Oct. 15, 2014), available at <http://www.wsj.com/articles/all-you-can-text-therapy-services-1413398763>.

of compacts is increasingly being used to address provider licensure issues. The Federation of State Medical Boards has implemented an interstate physician licensure compact which “offers a new, voluntary expedited pathway to licensure for qualified physicians who wish to practice in multiple states, increasing access to health care for patients in underserved or rural areas and allowing them to more easily connect with medical experts through the use of telemedicine technologies.”¹⁸ At present, sixteen states are members of the compact, including Alabama, Illinois, Minnesota, and West Virginia. The compact will allow physicians, such as psychiatrists, to more efficiently be appropriately licensed in multiple states that are members of the compact. In addition to the sixteen states in the compact, there are a number of other states such as Oklahoma and Pennsylvania that have introduced legislation to be part of the compact. Nurses (RNs and LPNs/VNs) have long had a licensure compact in which a nurse who declares a compact state as his or her primary state of residence can practice (physically and remotely) in other compact states without having to obtain another license. There are 25 states that are members of the nurse compact.¹⁹

Other providers are getting in on the act. Recently, the National Council of State Boards of Nursing, a non-profit association comprising 59 boards of nursing, released a draft compact for advanced practice registered nurses (e.g., nurse practitioners).²⁰ Psychologists have also developed a draft compact to facilitate telehealth across jurisdictional boundaries.²¹ Ultimately, the easier it is for telemental health-care providers to obtain licenses in multiple states, the greater the numbers of available qualified professionals who can provide virtual services.

Practice Guidance

There is an increasingly well-developed library of practice guidelines available regarding the provision of telemental health-care services. The American Psychiatric Association, the American Psychological Association, the National Association of Social Workers,²² the Association of Social Work Boards, and the TeleMental Health Institute, among others, have guidelines or statements related to the provision of telemental health-care services. The American Telemedicine Association, a leading trade association in the telehealth space, has also developed a series of practice guidelines over the years related to provision of telemental health-care services, including its latest guidance regarding use of

real-time videoconferencing to provide online mental health services.²³ Other resources, such as the telehealth resource centers that provide guidance regarding various aspects of telehealth, are also available to telemental health-care providers.²⁴

The Role of Large Employers

According to a survey published in 2015 by the National Business Group on Health, 74 percent of large employers planned to offer telehealth services in plans they sponsor in 2016. The numbers are a dramatic increase from the previous year when only 48 percent planned to offer telehealth services.²⁵ The results mirror a Towers Watson study in which approximately 80 percent of employers indicated that they could be offering telemedicine services by 2018.²⁶ Given that telemental health-care services are usually part of the menu of services included in telehealth offerings of large employers, it augers well for the future of telemental health care that an increasing number of large employers offer and plan to offer telehealth services in their plans.

The Use of Accreditation

Health-care provider accreditation may increase acceptance of telemental health-care services by a variety of stakeholders. Telehealth accreditation is a relatively new phenomenon. There are two recent examples. The American Telemedicine Association (“ATA”) launched an accreditation program for online consultations in which ATA accredits organizations that provide online, real-time health services complying with certain standards.²⁷ In addition, URAC, a longstanding accrediting organization, has launched its own telehealth accreditation program for providers involved in consultations with facilities, consumers, and other health-care providers through televideo and other electronic methods.²⁸ Accreditation by respected organizations will only increase acceptance of telehealth services, including telemental health care, by stakeholders at large.

²³ American Telemedicine Assn., *Practice Guidelines for Video-Based Online Mental Health Services* (May 2013), available at <http://www.americantelemed.org/docs/default-source/standards/practice-guidelines-for-video-based-online-mental-health-services.pdf?sfvrsn=6>.

²⁴ Mid-Atlantic Telehealth Res. Ctr., *Telepsychiatry/TelebehavioralHealth*, available at <http://www.matrc.org/telepsychiatry-telemental-health>.

²⁵ National Business Group on Health, *Health Care Benefits Cost Increases to Hold Steady in 2016, National Business Group on Health Survey Finds*, available at <https://www.businessgrouphealth.org/pressroom/pressRelease.cfm?ID=263>.

²⁶ Willis Towers Watson, *Employers Expect Changes to Employee Health Care Programs to Retain Competitiveness, According to New Towers Watson Survey*, available at <https://www.towerswatson.com/en-US/Press/2015/03/employers-expect-changes-to-employee-health-care-programs-to-retain-competitiveness>.

²⁷ American Telemedicine Association, *ATA’s Accreditation Program for Online Patient Consultations*, available at <http://www.americantelemed.org/accreditation/online-patient-consultations#.V1XhlvkrKUI>.

²⁸ URAC, *Telehealth*, available at <https://www.urac.org/accreditation-and-measurement/accreditation-programs/all-programs/telehealth/>.

¹⁸ Federation of State Medical Boards, *Interstate Medical Licensure Compact*, available at <http://www.licenseportability.org/>.

¹⁹ National Council of the State Boards of Nursing, *Nurse Licensure Compact*, available at <https://www.ncsbn.org/nurse-licensure-compact.htm>.

²⁰ National Council of the State Boards of Nursing, *Advanced Practice Registered Nursing Compact*, available at https://www.ncsbn.org/APRN_Compact_Final_050415.pdf (APRNs are used in some telemental health-care contexts to provide services).

²¹ The Association of State and Provincial Psychology Boards, *Psychology Interjurisdictional Compact*, available at <http://www.asppb.net/?page=PSYPACT>.

²² Nat’l Assn. of Social Workers, *Social Workers and e-Therapy*, available at https://www.socialworkers.org/ldf/legal_issue/2007/200704.asp.

Obstacles to Provision of Telemental Health-Care Services Frustrate Providers

Despite the promise of telemental health-care services, some practical obstacles to providing these services remain as concerns to providers, including how to properly assess nonverbal cues when communicating with patients by video, technical difficulties associated with the use of telehealth technologies, and the lack of proper training of many providers regarding the appropriate provision of telehealth services. A study looking at these and other barriers noted:

- Concerns from many mental health-care providers that remote services may make it more difficult for them to establish a rapport and build a good relationship with patients, thereby making it harder for patients to comply with treatment plans, and
- Concerns from mental health-care providers regarding how telemental health-care services could affect their clinical workflows (e.g., buying new and expensive technology to support the provision of these services, adopting new procedures to separately address the nature of telehealth (i.e., not face-to-face) encounters with patients, and other disruptions that impact the provision of mental health services to patients who need them).²⁹

However, given the prevalence of mental illness in this country, coupled with the shortage of mental health-care providers, it is highly unlikely that such concerns will derail the wider adoption of telemental health-care services.

Legal & Regulatory Issues

A number of significant legal, regulatory, and policy issues are implicated by the use of telemental health-care services, including privacy and security, follow-up care, emergency care, the treatment of minors, and reimbursement. While telemental health care touches on some federal laws and regulations (e.g., the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”)), most of the significant legal and regulatory issues related to the provision of telemental health-care services involve state law, and states have taken varying approaches to regulating telehealth services generally and telemental health-care services in particular. This has resulted in an inconsistent patchwork of laws and regulations that vary widely by state.

²⁹ E. Brooks, C. Turvey & E.F. Augusterfer, *Provider Barriers to Telemental Health: Obstacles Overcome, Obstacles Remaining*, *TELEMEDICINE AND E-HEALTH* 19(6) at 433–437 (May 22, 2013), available at <http://online.liebertpub.com/doi/abs/10.1089/tmj.2013.0068?journalCode=tmj>.

Here are some examples:

- In Delaware, an individual practicing “telepsychology” must conduct a risk-benefit analysis and document findings specific to issues, such as whether a patient’s presenting problems and apparent condition are consistent with the use of telepsychology to the patient’s benefit, and whether the patient has sufficient knowledge and skills in the use of technology involved in rendering the service or can use a personal aid or assistive device to benefit from the service.
- New Mexico requires social workers who provide services via electronic media (such as computer, telephone, radio, and television) to inform patients of the limitations and risks associated with these services.
- Maryland requires physicians (psychiatrists) to develop a procedure to prevent access to data by unauthorized persons through password protection, encryption, or other means and to develop a policy on how soon an individual can expect a response from the physician to questions or other requests included in a transmission.
- Montana psychologists may initially establish a “defined professional relationship” electronically so long as the means of communication involves a two-way, real-time, interactive platform providing for both audio and visual interaction.
- In Massachusetts, social workers treating individuals virtually obligates social workers to, among other things, carefully consider and address diverse issues such as structuring the relationship, obtaining informed consent, maintaining confidentiality, determining the basis for professional judgments, determining boundaries of competence, and maintaining security.

Conclusion

Demand for mental health services will not recede, and coupled with the mental health-care provider shortage, telemental health care will continue to be viewed as a viable solution by more clinicians, payers, and policymakers. This is particularly the case because many stakeholders view telemental health care as a naturally good fit for virtual care, even in the context of conventional face-to-face care encounters. All that notwithstanding, there are a number of significant legal and regulatory considerations that will need to be addressed in the coming years for telemental health care to really make its mark.