



The Belgian and Dutch legislation governing health care professions and task shifting

Ellen Vanermen, KU Leuven, Belgium

1. Task shifting (TS)



Task shifting – What?

- When tasks shift
 - from professionals belonging to one occupational group
 - to professionals belonging to another (possibly new) occupational group or subcategory thereof
 - E.g. from physicians to (specialised) nurses, nurse practitioners or physician assistants
- There are other definitions...
- ...and related concepts
 - Task reallocation, delegation, substitution, supplementation

Task shifting – Why?

- It is presumed by many that TS may have beneficial effects in terms of
 - addressing capacity shortages in one/more occupational group(s)
 - reducing waiting times
 - improving career perspectives
 - improving efficiency of, access to, quality, continuity and affordability of care
 - ...

Task shifting – Why?

- World Medical Association warns for potential risks (Resolution, 2009)
 - Decreased quality of care
 - Increased demand on physicians
- Research on and monitoring the effects of TS are important
 - E.g. Gielen, S.C., Dekker, J., Francke, A.L., Mistiaen, P., Kroezen, M. The effects of nurse prescribing: A systematic review. *International Journal of Nursing Studies*: 2013.
 - E.g. Laurant M., Reeves D., Hermens R., Braspenning J., Grol R., Sibbald B. Substitution of doctors by nurses in primary care. *Cochrane Database Reviews* 2005, Issue 2. Art. No: CD001271. DOI: 10.1002/14651858.CD001271.pub2.
 - ...

2. Task shifting from a legal point of view



Task shifting from a legal point of view

- Comparison between Belgian and Dutch legislation governing health care professions
- Which one facilitates TS more?
- In general
 - ~~Specific professions, specific tasks~~

Belgian legislation

- Health Care Professions Act (HCPA, 1967)
- All medical, pharmaceutical, nursing and paramedical acts are reserved to legally designated professionals
- It is prohibited to perform those acts unless one is legally authorized
- Each regulated health care profession is authorized to perform certain reserved activities

Dutch legislation

- Individual Health Care Professions Act (IHCPA, 1993)
- Everyone is allowed to perform individual health care acts, with the exception of 14 reserved activities
- It is prohibited to perform those activities unless one is legally authorized

Dutch legislation

- Title protection
 - Only those who meet certain requirements (registration/education) may use a specific title
 - A title holder is deemed competent for certain activities
 - Protected titles as quality labels

Dutch legislation

- Reserved activities (RA)
 - 14 activities deemed to pose a considerable risk to the health of the patient if performed by anyone who is not qualified
 - Surgical procedures
 - Obstetric procedures
 - Endoscopies
 - Catheterizations
 - Injections
 - Punctures
 - General anesthesia
 - Procedures involving the use of radioactive substances and devices emitting ionizing radiation
 - Elective cardioversion
 - Defibrillation
 - Electroconvulsive therapy
 - Lithotripsy
 - Artificial insemination
 - Prescribing medication

Dutch legislation

- Reserved activities (RA)
 - Art. 36 IHCPA determines for each RA which professionals are allowed to
 - assess whether RA is necessary
 - perform RA themselves OR delegate RA to others
 - = 'Autonomous authority'
 - Art. 36 a IHCPA: Experiment article
 - Subordinate legislation may, by way of experiment, grant autonomous authority to professionals who did not have such authority before, for a trial period of maximum five years

Which legislation facilitates task shifting more?

- Dutch legislation is more open and flexible and facilitates TS more
- Three reasons

1. Less reserved activities

- **The Netherlands**

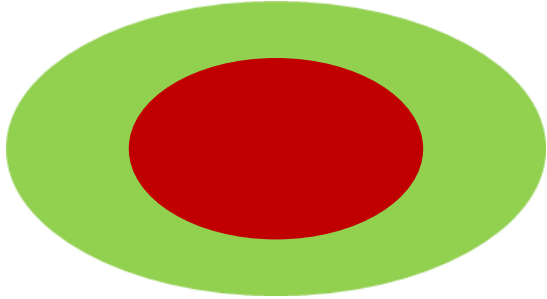
- 14 medical activities are reserved to legally authorized professionals

- **Belgium**

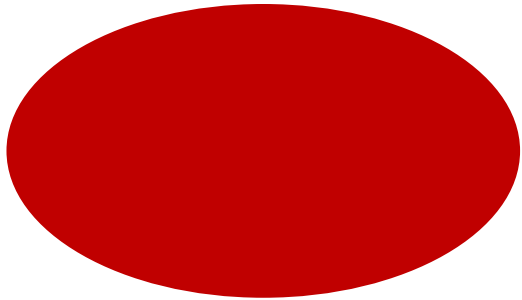
- All medical, pharmaceutical, nursing and paramedical acts are reserved to legally authorized persons

1. Less reserved activities

- **The Netherlands**

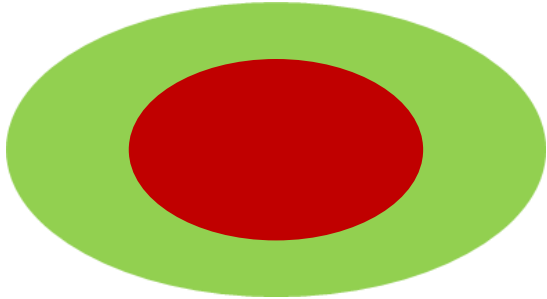


- **Belgium**

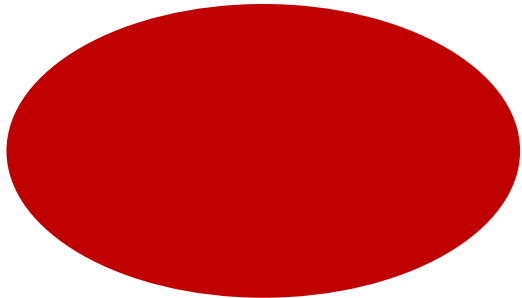


1. Less reserved activities

- **The Netherlands**



- **Belgium**



More restrictive

E.g. Nursing aid

- Authorized to perform 18 nursing acts
 - Hygienic care, measure temperature....: free in NL
- Often, they illegally perform more acts
 - Oxygen application, feeding persons having difficulties swallowing....: free in NL

2. Open delegation basis for RA

- **The Netherlands**

- Legislation only determines who is authorized to perform RA on his/her own initiative
- Professional with autonomous authority may delegate to **another professional**



He/she has to be qualified,
no further details

- Open delegation basis for RA

2. Open delegation basis for RA

- **Belgium**

- Legislation determines who is authorized to perform medical, pharmaceutical, nursing and paramedical acts
 - on his/her own initiative
 - or after delegation by another professional
- No open delegation basis
- **More restrictive**
 - E.g. injection of insuline: delegation to nursing aid is not an option

3. Experiment article

- **The Netherlands**

- Subordinate legislation may, by way of experiment, grant autonomous authority for RA to professionals who did not have such authority before, for a trial period of maximum five years
- Intermediate stage before amendment IHCPA
- Tool for evidence based legislation
 - Physician assistant and nurse practitioner: autonomous authority for most tested RA will be incorporated in article 36 IHCPA (amendment recently approved)

- **Belgium**

- Granting autonomous authority for medical activities to a non-physician requires amendment HCPA
- **Less flexible**
 - Physician assistant and nurse practitioner absent in Belgian legislation

Some remarks

- TS is not absent in Belgium
 - E.g. midwives authorized to prescribe certain medication
 - Legal basis 2006; implemented 2013
- Intention to revise Belgian HCPA thoroughly
 - Policy plan federal government 2014
 - No bill yet

3. EU law and regulation of health care professions



Directive 2005/36/EC on the recognition of professional qualifications

- Art. 21 (6): *‘Each Member State shall make access to, and pursuit of, the professional activities of doctors, nurses responsible for general care, dental practitioners, (...) midwives and pharmacists subject to possession of evidence of formal qualifications referred to in points (...) of Annex V respectively, attesting that the professional concerned, over the duration of his training, has acquired, as appropriate, the knowledge, skills and competences referred to in Articles (...).’*
- Is the Dutch system in accordance with art. 21 (6)?
 - The Netherlands: Title protection (= ‘mode of pursuit’, art. 1 Directive) & limited number of reserved activities

Directive 2005/36/EC on the recognition of professional qualifications

- Art. 59 (3): *‘Member States shall examine whether requirements under their legal system restricting the access to a profession or its pursuit to the holders of a specific professional qualification, including the use of professional titles and the professional activities allowed under such title, referred to in this Article as ‘requirements’ are compatible with the following principles:*
 - (a) requirements must be **neither directly nor indirectly discriminatory** on the basis of nationality or residence;
 - (b) requirements must be **justified by overriding reasons of general interest**;
 - (c) requirements must be **suitable** for securing the attainment of the objective pursued and must **not go beyond what is necessary** to attain that objective.’
- MS obliged to assess the proportionality of their professional regulations

Directive 2005/36/EC on the recognition of professional qualifications

- **Reporting obligations** for MS regarding assessing proportionality of their professional regulations
 - Art. 59 (5): *‘By 18 January 2016, Member States shall provide the Commission with information on the requirements they intend to maintain and the reasons for considering that those requirements comply with paragraph 3. Member States shall provide information on the requirements they subsequently introduced, and the reasons for considering that those requirements comply with paragraph 3, within six months of the adoption of the measure.’*
 - Art. 59 (6): *‘By 18 January 2016, and every two years thereafter, Member States shall also submit a report to the Commission about the requirements which have been removed or made less stringent.’*
 - Art. 59 (7): *‘The Commission shall forward the reports referred to in paragraph 6 to the other Member States which shall submit their observations within six months. Within the same period of six months, the Commission shall consult interested parties, including the professions concerned.’*

Directive 2005/36/EC on the recognition of professional qualifications

- **Transparency & mutual evaluation exercise, 2014-2016**
 - MS had to carry out a screening of all their legislation on all professions regulated in their territory
 - EU Commission:
 - Lack of clarity as regards the criteria to be used when assessing proportionality
 - Uneven scrutiny of measures
 - It has not prevented the introduction of new restrictive measures without objective and comprehensive analysis since
 - Follow-up initiative (art. 59 (9)):
Proposal for a Directive on a proportionality test before adoption of new regulation of professions
(January 2017)

Proposal for a directive on a proportionality test

- Art. 1 - Subject matter :
‘This Directive lays down rules on a common framework for conducting proportionality assessments before introducing new legislative, regulatory or administrative provisions restricting access to or pursuit of regulated professions, or amending existing ones, with a view to ensuring the proper functioning of the internal market’

Proposal for a directive on a proportionality test

- MS are obliged to conduct an **ex-ante proportionality assessment** substantiated by qualitative, and wherever possible, quantitative **evidence** (art. 4 (1) and (3))
- MS have to **monitor** the proportionality of their provisions on a regular basis (art. 4 (4))
- **Before** introducing new or modifying existing provisions restricting access to or pursuit of regulated professions, MS have to **assess** whether the provisions are:
 - **Justified by public interest objectives** (art. 5 (1); (2) lists justifications)
 - **Necessary and suitable** for securing the attainment of the objective pursued and **do not go beyond what is necessary** to attain that objective (art. 6 (1))

Proposal for a directive on a proportionality test

- Art. 6 (2) sets out the main **criteria** to be considered when assessing necessity and proportionality
 - Nature of risks
 - Scope of activities reserved to a profession
 - Link between qualification required and activities
 - Degree of autonomy in exercising a regulated profession
 - Economic impact of the measure
 - The possibility to use less restrictive means to achieve the public interest objective
 - Cumulative effect of restrictions ...
- Art. 6 (3) insists on assessing whether the objective of the regulation could be attained by the protection of the professional title without reserving activities
- *‘Lack of clarity as to the extent to which a specific approach for health professionals could be justified’* (Rita Baeten)
 - To what extent would the Belgian HCPA pass a thorough proportionality assessment?

Proposal for a directive on a proportionality test

- MS have to **inform stakeholders** before introducing new measures or amending existing ones and give them the possibility to express their views (art. 7)
- MS have to encourage **exchange of information** with competent authorities of **other MS** (art. 8)

Proposal for a directive on a proportionality test

- Different actors advocate the **exclusion of health care professions** from the proposed directive
 - Draft opinion Committee on the Environment, Public Health and Food Safety (EP)
 - Draft report Committee on the Internal Market and Consumer Protection (EP)
 - Fedcar
 - Standing Committee of European Doctors
 - Pharmaceutical Group of the EU
 - Council of European Dentists
 - Rita Baeten: *'This exclusion should be accompanied by a specific legal framework applying the free movement rules to national regulation on health professions and health services'*
 - Baeten, R. (2017) 'Was the exclusion of health care from the Services Directive a pyrrhic victory? A proportionality test on regulation of health professions', *OSE Paper Series*, Opinion Paper No. n°18, Brussels, European Social Observatory, April, 25 p.

4. Conclusions



Conclusions

- TS may be a strategy to address certain challenges
- Dutch legislation facilitates TS more than the Belgian legislation
- How much margin of appreciation do MS have in regulating health care professions?

Thank you for your attention

Questions?

Experiences with/views on...

-task shifting?

-legislation governing health care professions?

ellen.vanermen@kuleuven.be