ANNALS OF HEALTH LAW
Advance Directive

VOLUME 20 FALL 2010 PAGES 136-147

Medical Tourism: Opportunity to Control Escalating Health Care Costs in the United States?

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I. INTRODUCTION

With healthcare costs in the United States increasing at an estimated six percent per year for the next decade, and medical tourism offering savings of up to seventy percent after travel expenses,[1] medical tourism may be the best solution to containing health care costs. Medical tourism is defined by the Deloitte Center for Health Solutions as "the act of traveling to another country to seek specialized or economical medical care."[2] Although the U.S. has been a destination for international medical tourists for years, the growth of U.S. patients electing to obtain medical care in places such as India, Mexico, Singapore, Thailand and Turkey, is relatively recent. [3] In 2005, an estimated 500,000 Americans traveled outside the U.S. to obtain medical treatment.[4] According to a report by the Deloitte Center for Health Solutions, in 2007 that number jumped to an estimated 750,000. [5] In their most recent report, the Deloitte Center for Health Solutions projects that medical tourism could reach upwards of 1.6 million patients by 2012, with sustainable annual growth of thirty-five percent.[6]

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1. DELOITTE CTR. FOR HEALTH SOLUTIONS, *Medical Tourism: Update and Implications* 2 (2009), http://www.deloitte.com/assets/Dcom-UnitedStates/Local%20Assets/Documents/us_chs_MedicalTourism_111209_web.pdf [hereinafter *Medical Tourism 2009*].

2. DELOITTE CTR. FOR HEALTH SOLUTIONS, *Medical Tourism: Consumers in Search of Value* 6 (2008), http://www.deloitte.com/assets/Dcom-UnitedStates/Local%20Assets/Documents/us_chs_MedicalTourismStudy(3).pdf [hereinafter *Medical Tourism 2008*].

3. Kevin J. Ryan, *Reforms won't completely eliminate medical tWon't Completely Eliminate Medical Tourism*, Nat'l L.J., July 26, 2010, at 1, *available at* http://www.muchshelist.com/_resources/files/medical-tourism-and-health-care-reform.pdf.

4. Kristen Boyle, *A Permanent Vacation: Evaluating Medical Tourism's Place in the United States Healthcare System*, 20 HEALTH L. no. 5, June 2008 at 42, 42-43.

5. *Medical Tourism 2009*, *supra* note 1, at 3.

6. *Id*.

The growth of the medical tourism industry has emerged as a consumer-driven[7] response to the rising cost of obtaining health care in the U.S.[8] American patients electing to obtain medical care abroad have typically been either uninsured or underinsured individuals looking for both significant savings on medical expenses and high-quality care.[9] Even with the passage of the recent healthcare reform law known as the Patient Protection and Affordable Care Act (PPACA), a significant portion of the U.S. population will remain underinsured, making certain that medical tourism will remain an alternative for millions of Americans.[10] Additionally, with prices of health care in the U.S. expected to rise under healthcare reform, a growing number of insurance companies and employers are considering (or in a few cases have already implemented) programs that would incentivize their insured patients to utilize options for medical treatment outside the U.S.[11] This article will examine the potential financial advantages of medical tourism relative to the quality of medical care and services found in foreign hospitals. This article will then recommend whether or not medical tourism should be utilized as an option for both individual and employer purchasers of health care in order to reduce costs.

II. COST SAVINGS

For U.S. patients, medical tourism offers significant cost savings.[12] A 2008 report by the Deloitte Center, estimated overall price savings, including the cost of travel and insurance, ranged from twenty-eight to eighty-eight percent depending on the location and procedure.[13] For example, the average cost of knee surgery performed in the U.S. is $11,692 for inpatient surgery and $4,686 for outpatient surgery.[14] The average price

7. Ryan, *supra* note 3, at 1.

8. AM. MED. ASS'N AMA COUNCIL OF MED. SERVS., *Report of the Council on Medical Service* 5 (2008), http://www.ama-assn.org/ama1/pub/upload/mm/372/a-08cms1.pdf [hereinafter AMA COUNCIL OF MEDICAL SERVICES].

9. Ryan, *supra* note 3, at 2.

10. *Id.*

11. Glen Cohen, *Protecting Patients with Passports: Medical Tourism and the Patient-Protective Argument*, 95 IOWA L. REV. 1467, 1473 (2010).

12. *Id*. at 1472.

13. *Medical Tourism 2008*, *supra* note 2, at 13. The Deloitte report compared the cost of U.S. vs. foreign surgical procedures for fifteen surgical procedures frequently used in outbound programs.

14. *Id.*

among the three lowest foreign providers for knee surgery is only $1,398.[15] Similarly, while the retail price of gastric bypass surgery in the U.S., which is what it will cost for those without health insurance, ranges from $48,000 to $69,000, U.S. insurance companies will pay anywhere from $28,000 to $40,000.[16] The cost drops even more substantially when the surgery is performed outside the U.S. - the price for gastric bypass surgery performed in hospitals in India, Thailand and Singapore is between $11,000 and $15,000, including hospitals costs, airfare, and hotel rooms.[17]

"Patients can also find lower-prices for nonsurgical procedures and tests abroad."[18] The cost of an MRI in Brazil, Costa Rica, India, Mexico, Singapore or Thailand ranges from $200 to $300, compared to more than $1,000 in the U.S.[19] The cost for a comprehensive fitness exam at India's Rajan Dhall Hospital, including an echocardiogram, a stress test, a lung-function test, and ultrasound of internal organs, is about $125.[20] A comparable battery of tests in the U.S. would run upwards of $4,000.[21] The potential savings can benefit both uninsured and underinsured patients, as well as insured patients who bear some of the cost through co-payments and deductibles.[22]

The growth of medical tourism in the U.S. stems from financial incentives. The effect of financial incentives on Americans' willingness to travel for medical care is illustrated by a recent survey.[23] Almost no one would travel abroad for medical treatment to save $200 or less.[24] Twenty-five percent of uninsured people would travel abroad for care if the savings amounted to between $1,000 and $2,400, but only ten percent of those with health insurance would travel abroad with savings in that price range.[25] On the other hand, when savings exceed $10,000 about thirty-eight percent of the uninsured and

15. *Id*.
16. AMA COUNCIL OF MEDICAL SERVICES, *supra* note 8, at 4.
17. Devon M. Herrick, *Medical Tourism: Global Competition in Health Care*, *NAT'L CTR. FOR POLICY ANALYSIS* 11 (2007), http://www.ncpa.org/pdfs/st304.pdf.
18. *Id*. at 9.
19. *Id.*
20. *Id*.
21. *Id.*
22. *Id.* at 3.
23. Herrick, *supra* note 17, at 2.
24. *Id*.
25. *Id*.

twenty-five percent of those with insurance would travel abroad for care.[26]

Critics of medical tourism argue that the savings per procedure in a low-cost hospital abroad can be misleading and that for uninsured or underinsured patients travel costs, vendor fees, and administrative costs reduce overall savings.[27] The savings for employers who consider sending their employees abroad for medical care is further reduced because in addition to the costs above, employers often need to provide financial incentives to their employees in order for employees to be willing to go abroad for medical care.[28] Further, the patient may need to be away from work for considerably longer periods of time when receiving treatment abroad due to the need for pre-operative testing at the destination facility as well as recuperation following the procedure.[29] Patients receiving medical care abroad cannot return home until they have sufficiently recovered and are strong enough to endure the trip back to the U.S.[30] If complications arise while the patient is abroad, the patient will be away from work for a further extended period of time while he or she is recovering, causing a loss of profit to the employer who originally intended to cut costs.[31]

III. WHY TREATMENT ABROAD COSTS LESS

The cost of medical care in foreign countries is lower than in the U.S. for a variety of reasons. To begin with, lower labor costs abroad make it much less expensive to build and operate hospitals in other countries.[32] The Centers for Medicare and Medicaid Services (CMS) estimate that almost seventy percent of inpatient hospitals costs are labor related.[33] Physicians abroad earn about forty percent less than comparable physicians in the U.S.[34] The average nurses' salaries are also one-fifth to one-twentieth of those in the U.S.[35] Additionally, in most foreign countries there is less third-party payment of

26. *Id*.
27. Boyle, *supra* note 4, at 45.
28. *Id*.
29. *Id*.
30. *Id*.
31. Howard D. Bye, *Shopping Abroad for Medical Care: The Next Step in Controlling the Escalating Health Care Costs of American Group Health Plans?,* 19 HEALTH L., no. 5, April 2007 at 30, 31.
32. Herrick, *supra* note 17, at 10.
33. Cohen, *supra* note 11, at 1481.
34. Herrick, *supra* note 17, at 10.
35. *Id*.

medical services.[36] In the U.S., patients spend only about thirteen cents out of pocket for every dollar spent on their health care; insurers, employers, and government pay the balance.[37] In countries where patients are responsible for paying a larger portion of their health care costs, like those countries with growing entrepreneurial medical markets, patients are more price-conscientious, which in turn forces providers to compete for their business.[38]

Another explanation for why medical treatments cost less abroad is because malpractice liability is greater in the U.S. than in most other countries.[39] For example, in New York a heart surgeon can pay more than $100,000 annually for malpractice insurance, while a heart surgeon in India pays only $4,000 per year.[40] In the U.S., the costs of medical malpractice insurance is passed on to patients directly if the patient does not have insurance or indirectly, via increases in health insurance prices, if the patient is covered by a health insurance policy.[41] Direct costs of medical malpractice account for less than two percent of total health care spending in the U.S.[42] However, advocates of malpractice reform argue that the expansive medical malpractice liability found in the U.S. legal system, induces doctors to order unnecessary tests and procedures in an effort to minimize exposure to malpractice lawsuits, which in turn increases the overall costs of health care.[43] It is difficult to quantify how much the indirect costs of medical malpractice contributes to overall health care spending; however medical malpractice reform alone is unlikely to close the cost disparity of health care in the U.S. and abroad. Furthermore, the prospect of medical malpractice reform is unlikely to gain much traction due to the strength of the trial attorney lobby in Washington.

Although differences in medical malpractice laws outside the U.S. might drive the cost of health care down to some degree, critics of medical tourism note that it does so at the

36. *Id*.
37. *Id*.
38. *Id*.
39. *Id*. at 18.
40. Michael Klaus, *Outsourcing Vital Operations: What if U.S. Health Care Costs Drive Patients Overseas for Surgery?*, 9 QUINNIPIAC HEALTH L.J. 219, 230 (2006).
41. *Id*.
42. Nathan Cortez, *Patients Without Borders: The Emerging Global Market for Patients and the Evolution of Modern Health Care*, 83 IND. L.J. 71, 81 (2008).
43. Klaus, *supra* note 40, at 230.

expense of limiting a patient's likelihood and extent of recovery for a medical malpractice claim when a procedure performed outside the U.S. goes wrong.[44] However, medical tourists can avoid the uncertainties of litigating a medical malpractice claim in a foreign country by purchasing a reasonably priced medical malpractice policy that will provide compensation to insured patients or their beneficies in the event of adverse outcomes.[45] For example, a U.S. patient needing angioplasty can obtain $250,000 worth of coverage for a fee of $1,124.55.[46]

IV. QUALITY OF FOREIGN HOSPITALS CATERING TO MEDICAL TOURISTS

In many ways, the growth of medical tourism hinges on whether foreign hospitals can offer high-quality medical services at levels which U.S. residents are accustomed to.[47] If they cannot, then the cost advantage that medical tourism offers is gravely diminished.[48] However, many foreign providers have established themselves as international centers of excellence that offer high-quality medical services on par or perhaps better than the level of care in some American hospitals.[49] Although there is no international regulatory standard of care, the Joint Commission International ("JCI") (the international affiliate of the Joint Commission, which accredits U.S. hospitals) sends its review board to foreign hospitals to determine whether that facility is deserving of accreditation.[50] The board "uses the same rigorous accreditation standards that U.S. hospitals strive for."[51] In order for a hospital to maintain accreditation, it must consent to on-site evaluations every three years.[52] By the end of 2009, the JCI had accredited or certified more than 300 facilities in 39 countries.[53]

In the U.S. the health care industry is highly regulated by federal and state governments, which provide oversight to protect patients. The American Medical

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44. Herrick, *supra* note 17, at 18.
45. *Id*. at 19.
46. *Id*.
47. Cortez, *supra* note 42, at 102.
48. *Id.*
49. Bye, *supra* note 31, at 31.
50. Angeleque Parsiyar, *Medical Tourism: The Commodification of Health Care in Latin America*, 15 LAW & BUS. REV. AM. 379, 388 (2009).
51. *Id.*
52. *Id.*
53. Ryan, *supra* note 3, at 1.

Association (AMA) points out that patients going abroad for medical treatment cannot rely on the same governmental oversight found in the U.S.[54] Skeptics of medical tourism also argue that international quality standards are less rigorous than those in the U.S., which jeopardize a patient's ability to effectively access a physician's reliability of credentials.[55] Lack of oversight and regulation can lead to substandard care and result in adverse outcomes. For example, a Mexican plastic surgeon was found to be operating without a license and without adequate facilities.[56] Additionally, physicians in California have reported an increased number of emergency visits by medical tourists suffering from complications arising from surgery performed overseas by insufficiently trained surgeons.[57]

However, although hospitals in the U.S. are generally perceived to have high quality standards, the quality of American hospitals varies widely.[58] For example, one of the most commonly performed procedures in the U.S. today is coronary artery bypass graft (CABG) surgery.[59] Hospitals in California that perform CABG surgery have an average mortality rate of nearly three percent.[60] The average mortality rate of this surgery in California is nearly four times higher than the Cleveland Clinic, which has been considered the best hospital in the nation by U.S. News & World Report.[61] Among California hospitals performing CABG surgery, there is also a wide variation in quality of results.[62] The University of California Davis Medical Center experienced no deaths among the 136 patients receiving CABG surgery in 2003.[63] California's Desert Regional Medical Center, which performed a similar volume of surgeries as the University of California Davis, had a mortality rate of more than twice the California average and ten times Cleveland Clinic's average.[64] On the other hand, some of the more prestigious hospitals abroad that treat international patients, such as Apollo Hospital Group and

54. AMA COUNCIL OF MEDICAL SERVICES, *supra* note 8, at 5.
55. *Id*.
56. Boyle, *supra* note 4, at 46.
57. *Id*.
58. Herrick, *supra* note 17, at 14.
59. *Id*.
60. *Id*.
61. *Id*.
62. *Id*.
63. *Id.*
64. Herrick, *supra* note 17, at 14.

Wockhardt Hospitals, reported less than a one percent mortality rate for CABG surgery.[65]

Advocates of American medical tourism note that many of the physicians in foreign hospitals catering to American patients are trained in the U.S. or England.[66] In addition, the majority of physicians working with medical tourists either have U.S. board certifications or are certified for a particular specialty by a medical board.[67] For example, over 100 doctors at Bumrungrad International Hospital in Thailand are board-certified by U.S. medical specialty groups.[68] In addition to well-trained surgeons and medical staff, the quality of facilities in foreign hospitals are often state-of-the-art and offer more amenities than those found in most U.S. hospitals.[69] Some of the hospitals that cater towards medical tourists offer private rooms and 24-hour private nursing care.[70] Some also feature luxurious resort facilities and services that give them the look and feel of a five-star hotel rather than a hospital.[71]

Although many would argue the doctors in these foreign hospitals are as well trained as physicians in the U.S. and the facilities are as safe as U.S. hospitals, continuity of care is also an important part of the surgical process. Continuity of care is essential after a surgery in order to ensure quality results and many medical procedures require follow-up care to monitor the healing process.[72] A concern for U.S. patients electing to obtain medical care abroad is that upon returning home they may have difficulties finding a physician willing to provide post-operative follow-up care.[73] Physicians in the U.S. may be hesitant to treat patients for post-operative care, due to reluctance to take clinical responsibility for surgery that was performed abroad.[74] Although this is an important concern, patients can reduce this risk by arranging before they go abroad for medical care, a physician willing to treat post-operative care issues when they return home.[75]

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65. *Id*.
66. Bye, *supra* note 31, at 31.
67. Herrick, *supra* note 17, at 17.
68. Boyle, *supra* note 4, at 44.
69. *Id.*
70. *Id.*
71. *Id.*
72. *Id.* at 45.
73. Herrick, *supra* note 17, at 25.
74. Boyle, *supra* note 4, at 45.
75. *Id*.

V. HEALTH PLANS OFFERING MEDICAL TOURISM OPTIONS

For those without health insurance, medical tourism provides an option for care that might otherwise be cost prohibitive.[76] However, for those with health insurance, most patients rely on their health plans to determine which treatment options are available to them.[77] Numerous insurance companies have launched medical tourism pilot programs within their health benefits plans in hopes that medical tourism will reduce treatment costs and in turn they can provide insurance coverage to their clients at lower prices.[78] For example, Anthem Blue Cross and Blue Shield of Wisconsin will send employees of Serigraph, Inc., a corporate client of Anthem WellPoint, to Apollo Hospitals of India for certain elective procedures.[79] This project covers about 700 group members and Anthem Wellpoint manages all financial details, including travel and medical arrangements.[80] Additionally, in March 2007, BlueCross BlueShield of South Carolina began to cover surgeries performed at Bumrungrad to members whose personal policies did not cover certain surgeries they needed.[81]

The United Group Program of Florida, which sells self-insurance policies to small businesses, offers a plan that sends patients to Bumrungrad International Hospital.[82] United Group Programs of Florida has actively promoted medical tourism to more than 200,000 individuals covered through self-funded health plans and fully insured mini-med plans.[83] BlueShield of California offers a program called "Access to Baja" to customers who live near the U.S. – Mexico boarder and offers low-cost policies for treatments received in Mexico.[84] The plan covers about 20,000 patients and targets employers that hire large numbers of Mexican immigrants.[85] All of these plans generally offer lower premiums and deductibles than plans that only pay U.S. providers.[86] As U.S. healthcare

76. Ryan, *supra* note 3, at 1.
77. *Medical Tourism 2009*, *supra* note 1, at 5.
78. *Id*.
79. *Id*.
80. *Id*.
81. Boyle, *supra* note 4, at 44.
82. *Id*.
83. *Medical Tourism 2009*, *supra* note 1, at 5.
84. Cortez, *supra* note 42, at 100.
85. *Medical Tourism 2009*, *supra* note 1, at 5.
86. Cortez, *supra* note 42, at 100.

spending continues to rise, more insurers will likely consider using offshore providers.[87]

In addition to offering employees the option of receiving medical care in a resort-style atmosphere and a fully expense paid trip for the patient and a companion, some employers offer additional incentives for employees to travel abroad for treatment.[88] For example, some health care plans allow the employer to offer a fixed cash bonus ranging between $5,000 to $10,000, a cash bonus that is a percentage of the estimated savings, or an extravagant pre-surgery vacation in the foreign country that the employee receives the procedure in.[89]

Although medical tourism savings can benefit both the employee and employer, there are important legal considerations for employers and insurers offering medical tourism options.[90] Sponsors of medical tourism options must meet Employee Retirement Income Security Act (ERISA) fiduciary obligations in designing employee benefit plans.[91] Some legal scholars note that employers who offer employees financial incentives to travel abroad for medical care increase their liability risks.[92] They contend there could be potential problems with offering financial incentives to employees who are induced to choose a foreign hospital offering substandard care when they otherwise would have selected the local hospital of their choice.[93] This is problematic for the growth of medical tourism because if health plans cannot offer financial incentives for patients then patients are unlikely to consider going abroad for medical care.[94]

At the state level there have been only two attempts to enact legislation that would authorize incentives for covered employees who elect to obtain medical care in foreign facilities accredited by the JCI.[95] In 2007, a bill was introduced in West Virginia, which would establish specific incentives for covered employees who elected to obtain medical care or medical procedures outside the U.S., but died in committee.[96] The same year, a

87. *Id*. at 99.
88. Boyle, *supra* note 4, at 45.
89. *Id*.
90. Herrick, *supra* note 17, at 26.
91. *Id*.
92. *Id*.
93. *Id*.
94. *Id*.
95. *Medical Tourism 2009*, *supra* note 1, at 6.
96. *Id*.

bill introduced in Colorado, would have established incentives for state employees, covered under a state group benefit plan.[97] Although a variety of private insurers have introduced employer group health plans that offer options for medical treatment outside the U.S., there is not the same option available for state employees covered by a state group plan.[98] While the proposed Colorado bill would have given state employees an option to travel abroad for medical care, the bill has been postponed indefinitely in committee.[99] A large percentage of healthcare expenditures in the U.S. are paid for by the government through healthcare coverage for state and federal employees and unless employees are given the option of obtaining medical care abroad, the potential cost savings that medical tourism offers will be significantly reduced.[100] Additionally, private insurers offering incentives to clients who chose to obtain medical care abroad would benefit from legislation authorizing the use of incentives to minimize fear that they do so at the expense of increasing their liability.

VI. RECOMMENDATIONS

Today, the cost for health care in the U.S. is out of control and leaves more than fifty million Americans without health insurance.[101] The financial burden on employers who sponsor employee health care benefit plans is already tremendous and approaching unsustainable levels.[102] The PPACA will further increase health insurance costs by waiving pre-existing conditions, eliminating lifetime limits on essential health benefits, and expanding the dependent coverage age to twenty-six.[103] Health care reform does not create a public option or a government plan, so the insurance marketplace will still be run by private industry that will have to raise their rates in order to comply with the new provisions under the PPACA.[104] As individuals, employers, and insurance companies begin to feel the affect of health care reform in the form of increased costs, they must

97. *Id*.
98. Boyle, *supra* note 4, at 44.
99. *Medical Tourism 2009*, *supra* note 1, at 6.
100. Herrick, *supra* note 17, at 26.
101. MED. TOURISM ASS'N, *US Health Reform's Affect on Outbound Medical Tourism from the U.S.* 2 (2010), *http://www.medicaltourismassociation.com/en/hcr-updates.html.*
102. *Id*.
103. *Id*. at 3.
104. *Id*.

look for innovative ways to control costs.

Medical tourism provides cost-effective options for medical procedures that can benefit all types of U.S. consumers of health care. Potential safety concerns for medical tourists can be reduced by encouraging medical tourists to only select JCI accredited hospitals for their medical needs. Insurance companies should continue to expand health insurance plans that offer treatment options outside the U.S. Legislation should be enacted that protects insurers and employers who send willing patients abroad for medical care from liability. Employees of state-sponsored healthcare plans should also be given the option of traveling abroad for medical care, which could provide financial benefits to both the employee and the state government. It is unrealistic to think that the majority of Americans will travel abroad for medical care but we should at least give Americans the option to become medical tourists and take advantage of the potential for significant cost savings that medical tourism offers.