

## Feature Article

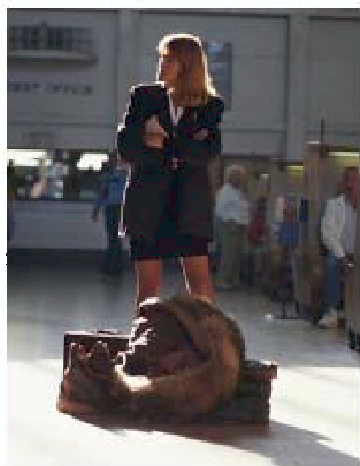
### Medical Tourism: The Ultimate Outsourcing

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For more than a generation, America has capitalized on the benefits of low-cost labor in Southeast Asia as a source of inexpensive merchandise. During the past decade, American industry discovered India, the Philippines, and Asia Pacific countries as sources of low-cost technical and call center support. Today, some professional service organizations, such as accounting and consulting firms, outsource work to India to minimize labor costs. The global economy is forcing American business to relentlessly seek new efficiencies to remain competitive. The high cost of healthcare is a prime target for savings.

The American healthcare system is the most costly in the world. Indeed, the high costs of American medicine have put many American businesses at a competitive disadvantage with foreign firms. Simply put, countries such as India, Thailand, Mexico, and Costa Rica can provide healthcare treatment at much lower prices than in the United States.

Quality medical treatment is among the American population's most esteemed benefits. Can plan sponsors save sufficient money by substituting medical services in India or Thailand for those delivered in the U.S. to justify promoting this alternative to employees? Is it realistic to expect workers to travel halfway around the globe to receive treatment for complex medical problems? What are the legal issues associated with these alternatives? We explore these issues and more in this article.



### Important Considerations

Only highly motivated individuals will travel long distances for medical treatment. The quality of care and outcomes in these Asia Pacific destinations are not the motivators, since no country can boast more successful clinical outcomes for complex surgical procedures than the U.S. Thus, plan sponsors must be prepared to offer substantial financial savings to motivate employees to travel extraordinary distances to receive complex treatment in a foreign culture. To a lower-paid employee enrolled in a medical plan with deductibles and co-insurance, the financial gain associated with seeking this low-cost alternative treatment may prove irresistible.

Before promoting the offshore medical treatment option, plan sponsors need to consider the following issues:

### ***Quality of Care***

Some institutions in India and Thailand seeking American patients tout the fact that they have secured accreditation from Joint Commission International, a subsidiary of the Joint Commission for the Accreditation of Healthcare Organizations (JCAHO). Some physicians performing services will be U.S.-trained or board certified. It makes sense that any U.S. employers promoting offshore healthcare should seek accredited or board certified medical providers to reduce liability exposure. Nevertheless, plan sponsors need to keep in mind that medical treatment outcomes in the U.S. vary substantially across JCAHO-accredited hospitals. Indeed, studies in this country have shown widely varying mortality and complication rates for accredited hospitals even in the same city. Thus, despite best efforts to work with only “quality” medical providers, there will always be a risk of surgical complications that could develop into a public relations nightmare, not to mention trauma for the employee.

Continuity of care, mainly post-operative treatment, should not be overlooked in planning an offshore healthcare benefit. Plan sponsors need to explore how patients can link up with a U.S. physician to receive post-operative care when they return home. Some American physicians may be reluctant to take clinical responsibility for such patients, if the surgery was performed in another country. In addition, even the most accomplished surgeon, supported by experienced nurses and other healthcare personnel, will have occasional complications for complex procedures. Occasionally, complications develop after the patient has been discharged.

### ***Savings Potential***

Savings per procedure in low-cost Indian or Thai hospitals might tempt even the most skeptical plan sponsors. However, savings can be misleading. The focus should be on net savings and not on per unit savings. The following factors will temper the savings potential:

- Only very high-cost treatment exceeding \$25,000 in the U.S. will be worthy of extraordinary travel distance and unknown risks.
- All treatment must be elective and scheduled.
- Savings will be reduced by travel costs, financial incentives to the patient, vendor fees, administrative costs and travel, meals, lodging, and any trip cancellation insurance for a companion to accompany the patient.
- Because most eligible individuals covered in group health plans will not be attracted to as radical a concept as offshore healthcare for life-threatening or life-altering treatment, expect only limited acceptance by patients who meet offshore healthcare criteria.
- Absenteeism may be considerably longer for workers electing offshore treatment due to the need for pre-operative testing at the destination facility and recuperation following the procedure to get patients to the point that they can endure the return trip.

Given these and other limitations, even the most effectively promoted offshore healthcare benefit, reinforced with attractive financial incentives to patients, is unlikely to save more than one or two percent of total annual medical spend. Such modest saving must be weighed against potential adverse publicity and a host of largely ill-defined legal risks.

### ***Public Perception***

One company in the Southeast learned the difficult lesson that medical care should not be viewed as a commodity.

The company redesigned its medical plan to financially reward covered members who sought complex treatment in India. Employees were to receive twenty-five percent of the savings if they selected specified offshore institutions for treatment.

When the first union member volunteered to receive gallbladder removal and rotator cuff surgeries in India, the company's union threatened to file an injunction, went public with its opposition and forced abandonment of the offshore healthcare program. What began as positive publicity for innovative action ended with the need to manage adverse press reports.

### ***ERISA Fiduciary Obligations***

Plan sponsors must meet ERISA fiduciary requirements when managing their group health plan. They have wide latitude in designing plans to best meet the needs of both parties: the plan sponsor and plan participants. However, plans must be administered in the best interest of plan participants, and fiduciaries must act prudently in selecting plan vendors, including an offshore healthcare vendor. In addition to using due diligence in selecting an offshore healthcare company, the vendor selection process and decision-making should be fully documented.

Plan sponsors should take steps to limit any potential fiduciary liability by conducting an initial investigation of the credentials and qualifications of the vendors and providers as part of a competitive selection process and monitor the vendor and providers on an ongoing basis. Even if a disgruntled employee sues the plan sponsor, it can defend itself by demonstrating the careful vetting it conducted of the medical offshoring vendor and providers.

### ***Plan Sponsor Liability***

There may be no greater liability exposure connected to offering an offshore healthcare option than is currently

## **Background**

During the past decade, respected hospitals, including Bumrungrad International in Thailand and Apollo in India, have offered cosmetic surgery (e.g., tummy tucks and breast augmentation) to the American public for a fraction of the cost in the U.S. Because cosmetic surgery is not covered under most group health plans, individuals were enticed to travel 10,000+ miles for the procedure to avoid high out-of-pocket expenses. These surgeries were often coupled with inexpensive vacations in India or Thailand at five-star resorts. This gave rise to the term "medical tourism."

Today, a handful of Asia Pacific hospitals have expanded their service offerings to include complex procedures, such as coronary artery bypass surgery, mitral valve replacement, joint replacement, and herniated disc surgery. These institutions in turn are supported by a nascent industry that simplifies the process by transferring medical records for patients across the Pacific, making air and hotel reservations, and hosting patients when they arrive at the destination airport.

Prompted by publicity associated with a "60 Minutes" TV segment and several articles in the popular press, many plan sponsors and some leading U.S. health plans are weighing the savings of offshore healthcare against the risks of the unknown. The press has reported on medical savings opportunities using institutions in India, Thailand, Singapore, Mexico, Brazil, Costa Rica, Hungary, Israel, the Philippines, and South Africa.

A very limited number of employers now promote the option of surgical treatment overseas for certain major procedures as part of their standard medical plan. Without a doubt, healthcare cost savings for both the plan sponsor and the employee are the main objective in offshore healthcare.

associated with sponsoring network-based managed care plans in the U.S. However, as with managed care plans, plan sponsors that offer a financial incentive to use offshore benefits should not claim in employee communication materials that the providers have a special endorsement or a seal of approval. Plan limitations should be clearly communicated so participants are aware of what is available to them and what is not.

If the plan sponsor is offering a significant financial incentive for employees to choose the offshore healthcare option, then liability risks may increase. They should require participants to sign a release stating they are responsible for conducting their own due diligence before accepting the foreign treatment offer.

The medical care provider, not the health plan or plan sponsor, is generally liable for medical malpractice. Although ERISA preemption does not apply to foreign laws, offshore healthcare vendor contracts should specify which laws apply to any liabilities that may arise with healthcare offshoring. Contracts and other written agreements between the plan sponsor and the offshore healthcare vendor should hold the sponsor harmless from any medical errors or malpractice that occurs during an employee's treatment overseas.

Medical malpractice is another important consideration. Plan sponsors should check that the offshore healthcare vendor carries sufficient malpractice insurance. Some vendors may also provide malpractice insurance indemnifying the patient should something go wrong. Malpractice lawsuits overseas are not as common as in the U.S., and medical malpractice awards may be a small fraction of the levels experienced in this country. This may become an issue for an aggrieved covered individual who suffers a medical misadventure.

### ***HIPAA Privacy Issues***

HIPAA privacy rules are strict, and health plans in the U.S. must follow these rules even for services provided in another country. However, outside of the U.S., HIPAA does not apply to foreign hospitals and doctors. Although privacy protection in Europe is generally thorough, Asia is not as strict.

HIPAA business associate agreements should be in place with offshore healthcare vendors. Also, the vendor should make an effort to have its contracts with hospitals and other healthcare providers in the host country comply with HIPAA standards. Foreign healthcare providers that want to serve U.S. customers, supported by offshore healthcare vendors here in the U.S., should be able to address these privacy issues.

### ***Travel-Related Exposures***

Plan sponsors should explore the legal remedies available to participants who get hurt while traveling for medical

### **Global Economy Demands Efficiencies**

The global economy is forcing American business to relentlessly seek new efficiencies to remain competitive. The high cost of healthcare is a prime target for savings. Coronary artery bypass graft surgery, for instance, can range from \$6,500 to \$10,000 in India, while the amounts paid by U.S. health plans to domestic medical centers can exceed \$50,000. In today's cutthroat global economy, savings of fifty percent or more for costly procedures will get the attention of most C-suite staff.

All American industries carry the burden of high medical costs. Given the unrivaled cost of medical care in the U.S. and our history of outsourcing to the Asia Pacific, it should not be surprising that hospitals in Asia Pacific are appealing to the American public as low-cost medical providers that offer quality care at unparalleled fees. The temptation to pursue such treatment avenues is great, driven by the huge cost differential. Mexico's medical providers have attracted some U.S. citizens who have ready access to the border. Mexican hospitals are not viewed as primary targets for American patients needing complex, non-cosmetic surgeries and are not discussed in this article.

purposes in the foreign country. Consider relevant laws in both the U.S. and the service-providing country. Sponsors might arrange for additional travel insurance to address this exposure.

### ***Protected Groups***

Employers need to be careful that their offshore healthcare option does not target employees based on protected group characteristics such as age, sex, race, or ethnicity. Also, HIPAA prohibits plans from discriminating based on health status. However, it appears to be acceptable to offshore a class of procedures. If employers are targeting a class of procedures, this will ensure that they cannot later be found to be targeting a certain group of people based on disability.

### ***Tax Implications: Medical Expenses and Cash Incentives***

Specific medical expenses can be paid for or reimbursed by a group health plan tax-free, even if care is provided overseas. For example, with inpatient hospital care, lodging and meals for the patient while in the hospital are covered by the plan without worry of taxes. However, lodging and meals for any offshore outpatient care may not be reimbursed on the same tax-favored basis. Travel expenses paid for by the plan sponsor would appear to be taxable since the employee is choosing for personal reasons, not out of medical necessity, to travel abroad to obtain medical treatment.

Any cash payments or financial incentives provided directly to the participant under the offshore healthcare option are fully taxable. However, a plan sponsor could waive medical plan co-pays or put an incentive payment in the employee's healthcare reimbursement account, and those payments would be tax-free. It would be prudent to assume that a plan sponsor's legal risks will increase as the amount of the incentive is raised for consumers who choose offshore healthcare.

### ***Concluding Thoughts***

Viewed superficially, offshore healthcare has great appeal. It has the potential to interject competition to make American medical centers more efficient. Individuals enrolled in traditional medical plans may be able to save thousands of dollars, while experiencing the stimulation of a trip to an exotic foreign culture.

To date, the vast majority of U.S. citizens who have traveled outside our boundaries for healthcare fall into one of three categories: (1) cosmetic surgery patients (generally not a covered benefit under group health plans); (2) those who lack health insurance; or (3) those who belong to a limited benefit medical plan (also known as mini-med plans), which reimburse a small fraction of charges associated with complex surgical procedures. Offshore healthcare has made it financially possible for these patients to receive services that were unaffordable in the U.S. This is not the dynamic for group health plans in which consumer out-of-pocket expenditures are limited.

As with any new benefit trend, plan sponsors need to examine their own circumstances and workforce needs to determine if offshore healthcare is right for them. Although cost savings is the initial attention grabber, employers need to carefully consider all the factors surrounding offshore healthcare that detract from the appeal, including the anticipated limited impact on overall medical plan costs, quality of care, public perception, legal, and tax considerations. Given these limitations, we anticipate only modest adoption of offshore healthcare in the near term.

***For more information on this topic,  
contact Aon Consulting at 1.800.438.6487.***

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