

**INBOUND MEDICAL TOURISM AND VISA  
REFORM: HOW INCREASING  
ACCESSIBILITY FOR FOREIGN PATIENTS  
CAN DECREASE AMERICAN HEALTHCARE  
COSTS**

*Alex Hunt\**

I. INTRODUCTION..... 104

II. OVERVIEW OF INBOUND MEDICAL TOURISM IN THE UNITED STATES..... 106

A. *Medical Tourism Defined* ..... 106

B. *Why Do Patients Travel For Medical Care?* ..... 108

C. *Benefits of Inbound Medical Tourism*..... 110

D. *September 11’s Impact on Immigration*..... 113

III. CURRENT IMMIGRATION PROCESS FOR FOREIGN PATIENTS..... 115

A. *Visa Process for Foreign Patients*..... 115

B. *Common Obstacles Encountered*..... 117

IV. POTENTIAL SOLUTIONS TO INCREASE ACCESSIBILITY ..... 124

A. *New “Medical Treatment” Visa Category* ..... 124

B. *International Medical Visitor Agreement* ..... 130

V. CONCLUSION ..... 136

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## I. INTRODUCTION

The idea of medical tourism has only recently been introduced to ordinary Americans.<sup>1</sup> When the average American pictures a typical medical tourist, he or she likely conjures up an image of a United States citizen who lacks adequate insurance coverage and is forced to travel overseas to seek refuge from skyrocketing prices at home.<sup>2</sup> In 2006, Americans caught their first glimpse at the potential rise of medical tourism, when North Carolina-based Blue Ridge Paper Products, Inc. offered an incentive in its employee benefit plan if employees elected to have nonemergency surgeries in a Preferred Provider Organization-approved hospital in India.<sup>3</sup> Blue Ridge eventually ended the program after an employees' union pushed back.<sup>4</sup> Nevertheless, the concept of lower-cost, foreign-based medical care has been an increasingly attractive and viable option for employers and insurers.<sup>5</sup> As a result, the number of Americans

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1. See Malcolm Foster & Margie Mason, *Businesses May Move Health Care Overseas*, WASHINGTON POST (Nov. 2, 2006), [http://www.washingtonpost.com/wp-dyn/content/article/2006/11/02/AR2006110200728\\_pf.html](http://www.washingtonpost.com/wp-dyn/content/article/2006/11/02/AR2006110200728_pf.html); Sana Butler, *Holidays for Health*, NEWSWEEK INT'L (May 18, 2009), <http://www.newsweek.com/id/195712>; Unmesh Kher, *Outsourcing Your Heart*, TIME, May 21, 2006, at 44, available at <http://www.time.com/time/magazine/article/0,9171,1196429,00.html>.

2. See Nathan Cortez, *Recalibrating the Legal Risks of Cross-Border Health Care*, 10 YALE J. HEALTH POL'Y L. & ETHICS 1, 2-4 (2010).

3. Levi Burkett, *Medical Tourism: Concerns, Benefits, and the American Legal Perspective*, 28 J. LEGAL MED. 223, 223 (2007). See also Foster & Mason, *supra* note 1.

4. Foster & Mason, *supra* note 1.

5. The nation's top four health insurance companies have either adopted or explored the idea of offering medical care overseas to U.S. patients. Nathan Cortez, *Embracing the New Geography of Health Care: A Novel Way to Cover Those Left Out of Health Reform*, 84 S. CAL. L. REV. 859, 882 (2011). See also Roni Rabin, *Insurer Offers Option for Surgery in India*, N.Y. TIMES (Nov. 21, 2008), <http://www.nytimes.com/2008/11/21/health/21abroad.html> (explaining that "[t]he health insurer Wellpoint is testing a new program that gives covered patients the option of going to India for elective surgery, with no out-of-pocket medical costs and free travel for both the patient and a companion"); *BlueCross BlueShield and BlueChoice HealthPlan Pioneer Global Healthcare Alternative*, BUSINESS WIRE (Feb. 8, 2007), <http://www.businesswire.com/news/home/20070208005660/en/BlueCross-BlueShield-BlueChoice-HealthPlan-Pioneer-Global-Healthcare> (describing BlueCross BlueShield of South Carolina's partnership with Bumrungrad International Hospital in Bangkok, Thailand as among the first of its

seeking medical treatment outside U.S. borders is expected to increase drastically by 2017.<sup>6</sup>

Although medical tourism is typically associated with Americans going abroad for lower-cost care, inbound medical tourism presents a largely untapped resource with the potential to fill and exceed the gap in revenue lost when Americans seek treatment abroad.<sup>7</sup> However, U.S. immigration laws create bureaucratic barriers that make it difficult for paying patients to reach America's shores or receive treatment without experiencing the aggravations of a broken visa system.<sup>8</sup> Patients face burdensome paperwork requirements, lengthy wait times, and visa regulations that do not give American providers an opportunity to compete in the new global medical marketplace. As the medical travel industry continues to grow,<sup>9</sup> and American hospitals lose revenue overseas,<sup>10</sup> the federal government must reform the outdated immigration code that makes it difficult to attract foreign medical travelers.

In Part II, this Comment presents an overview of medical tourism and its different forms, the benefits of reducing burdens for foreign medical visitors, and a brief history of the obstacles encountered by foreign patients after September 11, 2001. In Part III, this Comment discusses the current immigration process to enter the United States for medical treatment, including common obstacles encountered during the visa process. Finally, in Part IV, this Comment provides several

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kind in the nation).

6. DELOITTE CTR. FOR HEALTH SOLUTIONS, *MEDICAL TOURISM: CONSUMERS IN SEARCH OF VALUE*, at 14 (2008) available at [http://www.deloitte.com/assets/Dcom-unitedStates/Local%20Assets/Documents/us\\_chs\\_MedicalTourismStudy\(3\).pdf](http://www.deloitte.com/assets/Dcom-unitedStates/Local%20Assets/Documents/us_chs_MedicalTourismStudy(3).pdf) [hereinafter *CONSUMERS IN SEARCH OF VALUE*] (predicting the 750,000 outbound medical tourists in 2007 to increase to 15.75 million in 2017).

7. *See id.* at 20.

8. Telephone Interview with Rose Mary Valencia, Visa and Immigration Servs. Admin., Univ. of Tex. M.D. Anderson Cancer Ctr. (Oct. 17, 2011) [hereinafter Valencia interview].

9. *See generally* *CONSUMERS IN SEARCH OF VALUE*, *supra* note 6, at 3 (citing statistics showing that the number of Americans traveling abroad for medical care will increase from an estimate 750,000 to six million between 2007 and 2010).

10. *Id.* at 15 (noting that U.S. domestic medical spending lost to international markets is expected to rise from approximately \$15.9 billion USD to between \$228.5 and \$599.5 billion USD between 2008 and 2017).

solutions to attract foreign medical visitors, including the creation of a new medical visa category that enables easier access to American hospitals and clinics.

## II. OVERVIEW OF INBOUND MEDICAL TOURISM IN THE UNITED STATES

### A. *Medical Tourism Defined*

Medical tourism is defined as the “act of traveling to another country to seek specialized or economic medical care, well being and recuperation of acceptable quality with the help of a support system.”<sup>11</sup> The term “medical tourism” was originally created as a marketing tool to entice American patients to purchase vacation packages to foreign countries that included lower cost medical or dental care.<sup>12</sup> The term initially encompassed only this type of “outbound” transaction.<sup>13</sup> Soon, however, the concept of medical tourism developed into three distinct categories: outbound, inbound, and intrabound.<sup>14</sup> Outbound medical tourism refers to U.S. patients traveling to other countries to receive medical care,<sup>15</sup> while inbound medical tourism refers to foreign patients who travel to the United States to receive medical treatment.<sup>16</sup> Intrabound medical tourism refers to U.S. patients traveling within the United States to receive medical care outside their region, typically to a facility better equipped to treat their condition.<sup>17</sup>

#### 1. *“Outbound” Medical Tourism*

In 2007, approximately 750,000 American “outbound” medical tourists traveled abroad for medical care.<sup>18</sup> As Chart 1

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11. *Id.* at 6.

12. Burkett, *supra* note 3, at 226.

13. *Id.*

14. CONSUMERS IN SEARCH OF VALUE, *supra* note 6, at 3.

15. *Id.*

16. Alex Piper, *Compare and Contrast: Inbound vs. Outbound Healthcare*, MED. TOURISM MAG., July-Aug. 2009, at 16, available at <http://www.medicaltourismmag.com/download/issue-11.pdf>.

17. CONSUMERS IN SEARCH OF VALUE, *supra* note 6, at 3.

18. *Id.*

below shows, significant growth is expected over the next few years as healthcare costs continue to rise, more employers and health insurance companies provide incentives to utilize healthcare elsewhere, and American providers increase marketing and affiliate with more foreign organizations.<sup>19</sup>

CHART 1: Patient Demand, Outbound Tourism<sup>20</sup>

Year	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017
Patients (millions)	0.75	1.50	3.00	6.00	7.50	9.38	10.78	12.39	13.64	15.00	15.75
Growth Rate %	100	100	100	25	25	15	15	10	10	5	

Outbound medical tourism has had a significant impact on the finances of the American healthcare system. In 2007, Americans spent \$2.1 billion USD in other countries for health care.<sup>21</sup> This amount equals \$15.9 billion USD in lost revenue for U.S. healthcare providers.<sup>22</sup> As more patients are expected to go overseas for medical care, outbound medical tourism represents a potential opportunity cost to U.S. health care providers of \$228.5 to \$599.5 billion USD by 2017.<sup>23</sup>

## 2. “Inbound” Medical Tourism

While outbound medical tourism is a successful and growing industry, inbound medical tourism has lagged behind.<sup>24</sup> In 2008,

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19. *See id.* at 24–25. Some hospitals have also provided amenities and incentives to make foreign patients’ trips easier. For example, Houston’s Texas Medical Center opened a “Hospitality Lounge” inside Bush Intercontinental Airport. A “Special Service Representative” meets patients at their gate, assists them through immigration and customs, and directs them to a comfortable seating area equipped with televisions, a playroom, and refreshments. *TMC International Visitors Lounge at Bush Intercontinental Airport*, TMC COLLABORATION BEYOND BOUNDARIES MAG., 2009, at 4, available at <http://texasmedicalcenter.org/files/17/download/>.

20. CONSUMERS IN SEARCH OF VALUE, *supra* note 6, at 4.

21. *Id.* at 14.

22. *Id.*

23. *Id.*

24. *See* OECD, HEALTH AT A GLANCE 2011: OECD INDICATORS, at 159 (2011), available at <http://www.oecd.org/dataoecd/6/28/49105858.pdf> [hereinafter OECD]

an estimated 400,000 non-U.S. resident inbound medical tourists received medical care in the United States for a total of approximately \$5 billion USD spent on health services.<sup>25</sup> Inbound foreign patients account for approximately two percent of all users of hospital services<sup>26</sup> and three and one-half percent of all inpatient procedures performed in the United States.<sup>27</sup> Inbound medical tourists are primarily from Canada, South America, and the Middle East.<sup>28</sup> The leading U.S. providers of medical services to inbound tourists are Johns Hopkins Hospital, Cleveland Clinic, Mayo Clinic, Duke University School of Medicine, and Memorial Sloan-Kettering Cancer Center.<sup>29</sup> Many have affiliates and partners overseas.<sup>30</sup>

#### CHART 2: Patient Demand, U.S. Inbound Tourism<sup>31</sup>

Year	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017
Patients	417	430	443	456	470	484	498	513	529	544	561

(thousands)

#### B. *Why Do Patients Travel For Medical Care?*

Americans and foreigners seek medical care abroad for sharply different reasons. While nine percent of all international medical travelers seek lower-cost care, U.S. patients make up ninety-nine percent of this group.<sup>32</sup> Most American medical tourists seek medical care abroad because they can save

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(indicating that between 2004 and 2009, outbound medical tourism grew thirteen percent while inbound medical tourism grew only approximately 6.9%).

25. CONSUMERS IN SEARCH OF VALUE, *supra* note 6, at 19.

26. *Id.*

27. David G. Vequist & Erika Valdez, *Economic Report: Inbound Medical Tourism in the United States*, MED. TOURISM MAG., July-Aug. 2009, at 11, available at <http://www.medicaltourismmag.com/download/issue-11.pdf>.

28. CONSUMERS IN SEARCH OF VALUE, *supra* note 6, at 19.

29. Christine G. Leyden, *Coming to America—What Medical Tourists Need to Know*, MED. TOURISM MAG., July-Aug. 2009, at 39, available at <http://www.medicaltourismmag.com/download/issue-11.pdf>.

30. *Id.*

31. CONSUMERS IN SEARCH OF VALUE, *supra* note 6, at 20.

32. Tilman Ehrbeck, Ceani Guevara & Paul D. Mango, *Mapping the Market for Medical Travel*, MCKINSEY Q., May 2008, at 5, available at [http://www.mckinseyquarterly.com/Mapping\\_the\\_market\\_for\\_travel\\_2134](http://www.mckinseyquarterly.com/Mapping_the_market_for_travel_2134).

between fifty and ninety percent on common procedures.<sup>33</sup> More Americans are looking to foreign travel for medical care because more insurers are offering “consumer directed health plans,” in which payors offer higher premiums and deductibles to encourage patients to better utilize their own health care spending dollars.<sup>34</sup> Many experts believe that as more health insurers move toward these types of plans, patients will increasingly employ lower cost, foreign medical facilities to save money.<sup>35</sup>

In contrast, forty percent of medical travelers seek the most advanced technology and thirty-two percent want better quality care for medically necessary procedures than they could find in their home country.<sup>36</sup> Inbound medical tourists do not seek care in the United States because it is less expensive,<sup>37</sup> but because American providers offer the most advanced technologies and treatments.<sup>38</sup>

American providers have started to create an atmosphere that welcomes and markets to foreign patients. Major American hospitals have established international patient departments to accommodate foreign patients.<sup>39</sup> Many providers offer concierge

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33. See CONSUMERS IN SEARCH OF VALUE, *supra* note 6, at 13; Cortez, *supra* note 5, at 877. See also *The Globalization of Health Care: Can Medical Tourism Reduce Health Care Costs?: Hearing Before the Sen. Spec. Comm. on Aging*, 109th Cong. 9, 13 (2006) (written statement of Maggi Ann Grace) (testifying that she spent \$6,700 for heart surgery in India that would have cost between \$50,000 and \$200,000 USD if performed by U.S. providers).

34. Cortez, *supra* note 5, at 880.

35. *Id.*

36. Ehrbeck et al., *supra* note 32, at 4.

37. CONSUMERS IN SEARCH OF VALUE, *supra* note 6, at 21.

38. *Id.* at 19–21; See Vequist & Valdez, *supra* note 27, at 10–11.

39. See *International Center*, U. OF TEX. M.D. ANDERSON CANCER CENTER, <http://www.mdanderson.org/patient-and-cancer-information/guide-to-md-anderson/international-center/index.html> (last visited Sep. 8, 2012); *Welcome to Methodist International*, METHODIST HOSP. SYS., <http://www.methodisthealth.com/MethodistInternalServices> (last visited Sep. 8, 2012); *For International Patients*, MEMORIAL SLOAN-KETTERING CANCER CENTER, <http://www.mskcc.org/cancer-care/international-patients> (last visited Sep. 8, 2012) (referencing Bobst International Center); *International Patients*, CLEVELAND CLINIC, [http://my.clevelandclinic.org/global\\_patient\\_services/patients/international/default.aspx](http://my.clevelandclinic.org/global_patient_services/patients/international/default.aspx) (last visited Sep. 8, 2012); *International Services*, MAYO CLINIC, <http://www.mayoclinic.org/international/> (last visited Sep. 8, 2012).

services like airport pickup, language specialists, and travel and lodging assistance.<sup>40</sup> Hospitals that successfully attract international patients also often have affiliations with foreign providers, and some have branch facilities overseas.<sup>41</sup>

However, American hospitals seeking foreign patients are often constrained by immigration laws and regulations that make it difficult or impossible for patients to reach their facilities.<sup>42</sup> Although many hospitals previously assisted patients in acquiring and maintaining their visas with the U.S. government, some hospitals have found continuing those services during the economic downturn to be challenging.<sup>43</sup> In early 2011, M.D. Anderson, a major Houston-based cancer treatment facility with a sizable international center,<sup>44</sup> shut down its program that assisted foreign patients with their visas.<sup>45</sup>

### *C. Benefits of Inbound Medical Tourism*

Reforming America's current immigration laws and visa system would provide a significant benefit for American patients. Increasing revenue from inbound medical tourists would help offset the revenue lost to overseas medical providers, which could result in lower costs for American patients.<sup>46</sup> Increasing prices have prompted insurers to look outside the country's borders for options.<sup>47</sup> Foreign treatment facilities provide a clear incentive for payors because they can often provide identical treatments for as little as ten percent of the

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40. Vequist & Valdez, *supra* note 27, at 11. See also Rosanna Moreno, *Five Essentials for a Successful Inbound Medical Tourism Practice*, MED. TOURISM MAG., July-Aug. 2009, at 13–14, available at <http://www.medicaltourismmag.com/download/issue-11.pdf>.

41. Moreno, *supra* note 40, at 14.

42. See Valencia interview, *supra* note 8; Telephone Interview with Martha Coleman, Nurse Manager, Int'l Servs., Univ. of Tex. M.D. Anderson Cancer Ctr. (Oct. 22, 2011) [hereinafter Coleman interview].

43. See Valencia interview, *supra* note 8; Coleman interview, *supra* note 42.

44. See *International Center*, *supra* note 39.

45. See Valencia interview, *supra* note 8; Coleman interview, *supra* note 42.

46. See discussion *supra* Part II.A.

47. Cortez, *supra* note 5, at 882.

cost of the procedure if performed in the United States.<sup>48</sup>

In addition, increased accessibility for foreign patients could provide additional revenue for American hospitals.<sup>49</sup> That revenue could help alleviate the rising burden on American providers as a result of fewer patients being covered by private health insurance.<sup>50</sup> As a result of the high job loss experienced by many Americans since 2008,<sup>51</sup> many individuals and families are no longer covered by employer-provided private healthcare plans.<sup>52</sup> Uninsured patients often delay medical treatment or forego it altogether.<sup>53</sup> When uninsured patients do receive care, they are either (a) covered by often lower reimbursement state and federal plans, like Medicaid, or (b) lack coverage entirely and cannot compensate the provider at all.<sup>54</sup> As a result, financial burdens on hospitals rise.<sup>55</sup> To make up for lost revenue resulting from the shift from private payors to patients covered by Medicaid and similar programs, providers must increase prices on patients.<sup>56</sup>

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48. CONSUMERS IN SEARCH OF VALUE, *supra* note 6, at 4.

49. Jose Quesada, *Medical Tourism—An Economic Boost to the United States*, MED. TOURISM MAG., July-Aug. 2009, at 68–69, available at <http://www.medicaltourismmag.com/download/issue-11.pdf>.

50. See *id.* (explaining the “economic boost” inbound medical tourism provides to the United States); *The Economic Crisis: The Toll on the Patients and Communities Hospitals Service*, AM. HOSP. ASSOC., AT 5 (Apr. 27, 2009), <http://www.aha.org/content/00-10/090427econcrisisreport.pdf> [hereinafter AHA] (“The proportion of emergency department patients without insurance is increasing for six out of [ten] hospitals.”).

51. *Labor Force Statistics from the Current Population Survey: extracted on August 22, 2012*, U.S. DEP’T OF LABOR: BUREAU OF LABOR STATISTICS, <http://data.bls.gov/timeseries/LNS14000000> (last visited Aug. 22, 2012) (stating the overall unemployment rate doubled from five percent in April 2008 to ten percent in October 2009, with the current unemployment rate at 8.3% as of July 2012).

52. Quesada, *supra* note 49, at 68.

53. *Id.* See also AHA, *supra* note 50, at 7 (“The majority of hospitals report fewer patients are seeking inpatient and elective care.”).

54. See AHA, *supra* note 50, at 6 (finding “[u]ncompensated [c]are as a [p]ercent of [t]otal [g]ross [r]evenues” has increased in seventy percent of American hospitals, and the percent of “[p]atients [c]overed by Medicaid, SCHIP [State Children’s Health Insurance Program] and/or [o]ther [p]rograms for [l]ow [i]ncome [p]opulations” has increased in forty-six percent of American hospitals).

55. See Quesada, *supra* note 49, at 68.

56. See *id.* at 68. See also Burkett, *supra* note 3, at 235–36 (explaining that American health care is built on a cost-spreading model which “relies on a large pool of

Inbound medical tourism presents an opportunity to increase and diversify revenue for American providers.<sup>57</sup> Although the stability and future of America's healthcare system has been in the spotlight recently<sup>58</sup> with the debate and passing of the Patient Protection and Affordable Care Act (PPACA),<sup>59</sup> the United States still possesses innovative, high-tech medical technology and services.<sup>60</sup> As a result, foreign patients often pursue treatment in the United States because of the country's technology, shorter waiting times, and procedures that may be unavailable in their home countries.<sup>61</sup> Because American hospitals and clinics often cannot provide lower prices than foreign providers, they seek affluent foreign patients who can pay their bills in full.<sup>62</sup> Overall, inbound medical tourists tend to pay "commercial charges or higher for medical services," and are typically more affluent than the average patient.<sup>63</sup> Foreign patients often pay the full amount for their medical care in cash or through an international insurance policy that covers most medical costs.<sup>64</sup> Hospitals benefit from such arrangements because reimbursement and payment rates are typically higher than U.S. or state government sponsored plans.<sup>65</sup>

Although additional revenue brought into the U.S.

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persons paying into the plan to cover the cost of health care for any one person who may need care at any given time[.]").

57. Quesada, *supra* note 49, at 68.

58. See Sean Lenggell, *Health Care Debate to Flood Airwaves*, WASHINGTON TIMES, Mar. 8, 2009, at A1; Michael Scherer, *Top 10 Health-Care-Reform Fight Ads*, TIME Aug. 19, 2009,

[http://www.time.com/time/specials/packages/article/0,28804,1917490\\_1917489,00.html](http://www.time.com/time/specials/packages/article/0,28804,1917490_1917489,00.html); *Signed, Sealed, Delivered: Health Reform in America*, THE ECONOMIST, Mar. 27, 2010, at 31–32; Joe Klein, *Can Obama Keep Delivering on His Promise*, TIME, Mar. 24, 2010, <http://www.time.com/time/magazine/article/0,9171,1975326-3,00.html>.

59. Patient Protection and Affordable Care Act, Pub. L. No. 111-48, 124 Stat. 119 (2010).

60. See generally Ehrbeck et al., *supra* note 32, at 4.

61. CONSUMERS IN SEARCH OF VALUE, *supra* note 6, at 19–21; Vequist & Valdez, *supra* note 27, at 10–11.

62. USA: US Hospitals Promoting Inbound and Domestic Medical Tourism, INT'L MED. TRAVEL J., Jan. 19, 2011, <http://www.imtj.com/news/?EntryId82=269044>.

63. Vequist & Valdez, *supra* note 27, at 11.

64. Quesada, *supra* note 49, at 68–69.

65. See *id.*

healthcare system likely would reduce costs for all patients, inbound medical tourism is still a modest industry because it represents only between \$2.3 billion USD<sup>66</sup> and \$5 billion USD<sup>67</sup> of the \$2.5 trillion USD spent on healthcare in 2009 alone.<sup>68</sup> The visa process provides a major impediment to expanding foreign accessibility to American hospitals,<sup>69</sup> but the right regulatory climate for foreign patients could result in greater stability and lower costs for American patient consumers.<sup>70</sup>

#### *D. September 11's Impact on Immigration*

One concern that plays a prominent role in any immigration reform debate is the impact any policy change will have on the nation's security.<sup>71</sup> After the terrorist attacks of September 11, 2001, American hospitals witnessed the substantial effect national security concerns can play on inbound medical tourism.<sup>72</sup> In the wake of 9/11, the federal government reduced the number of Middle Eastern patients allowed to enter the United States for treatment.<sup>73</sup> For example, in 2001, forty-four percent of one Middle Eastern country's international medical travelers came to the United States for medical care.<sup>74</sup> By 2003,

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66. OECD, *supra* note 24, at 158.

67. CONSUMERS IN SEARCH OF VALUE, *supra* note 6, at 19.

68. Victoria Stagg Elliott, *Medical tourism very much a niche business*, AM. MED. NEWS (Dec. 14), 2011, <http://www.ama-assn.org/amednews/m/2011/12/12/bse1214.htm> (quoting the president of the Med. Tourism Assn. saying that "[m]edical tourism is not mainstream, but it is growing.").

69. Valencia interview, *supra* note 8.

70. This section does not address any moral arguments for expanding access to American medical care for foreign patients. However, greater accessibility may benefit America's global reputation as a nation that concerns itself with those who require medical attention across the world, and puts policies in place that allow American technology to be accessible to those who need it, regardless of nationality.

This section also does not address any positive economic impact outside of health care spending. Relocating foreign patients and their families could have a modest effect on the local economy in the health care provider's community.

71. See generally *Citizenship and Immigration Overview*, DEP'T OF HOMELAND SEC., <http://www.dhs.gov/citizenship-and-immigration-overview> (last visited Sept. 13, 2012).

72. See Ehrbeck et al., *supra* note 32, at 8.

73. *Id.*

74. *Id.*

the rate had reduced to eight percent as a result of “difficulty obtaining U.S. visas.”<sup>75</sup>

In Houston, the Texas Medical Center saw international patients drop from 45,000 to 8,000 annually.<sup>76</sup> The fall in foreign patients affected not only Houston hospitals, but also the local economy dependent on medical visitors.<sup>77</sup> Although numbers have since bounced back to pre-9/11 level nationally,<sup>78</sup> the Texas Medical Center reported only 18,000 international patients in 2009.<sup>79</sup>

National security is an important component of any immigration program,<sup>80</sup> but regulations should be flexible enough to allow the American healthcare system and overall economy to perform at their peak, while still protecting American citizens. In a recent conference about accessible health care, United States Secretary of Health and Human Services Kathleen Sebelius told a crowd that an effective health care system is part of our national security and “is an essential part of our prosperity.”<sup>81</sup> Secretary Sebelius stated that healthcare is critical to the United States’ competitiveness in an increasingly global marketplace, and cited statistics like the fact that “only about twenty-five percent of those who are of age to serve in the military can meet the physical requirements for service.”<sup>82</sup> Flexible, accessible visa reform can and should be an instrumental part of a long-term, forward-thinking national

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75. *Id.*

76. Ray Hankamer, *Dr. Richard Wainardi, President Texas Medical Center, Updated ULI May Meeting*, MARKET WATCH COMMERCIAL BUZZ, June 2007, at 24, available at [http://www.levcor.com/UserFiles/File/NewsArticles/REDNews\\_JUNE07\\_Issue.pdf](http://www.levcor.com/UserFiles/File/NewsArticles/REDNews_JUNE07_Issue.pdf).

77. *Id.*

78. Ehrbeck et al., *supra* note 32, at 8.

79. *TMC International Visitors Lounge at Bush Intercontinental Airport*, *supra* note 19, at 3.

80. *See generally* *Citizenship and Immigration Overview*, *supra* note 71 (indicating U.S. Citizenship and Immigration Services considers national security important to its operations).

81. Bruce Smith, *Sebelius: Health a national security issue*, REAL CLEAR POLITICS (Dec. 1, 2011), [http://www.realclearpolitics.com/news/ap/politics/2011/Dec/01/sebelius\\_health\\_a\\_national\\_security\\_issue.html](http://www.realclearpolitics.com/news/ap/politics/2011/Dec/01/sebelius_health_a_national_security_issue.html).

82. *Id.*

security policy.

### III. CURRENT IMMIGRATION PROCESS FOR FOREIGN PATIENTS

#### A. *Visa Process for Foreign Patients*

A visa is required for all noncitizen visitors to enter the United States.<sup>83</sup> A visa is a document that allows a noncitizen entrance into the United States, and is obtained with the United States Secretary of State through a process consisting of numerous forms, a consular interview, and an in-depth background check.<sup>84</sup>

Foreigners seeking entry into the United States must choose the appropriate visa category from a list of potential choices.<sup>85</sup> Foreign patients seeking medical treatment in the United States must choose a B-2 visa, a visitor visa intended for those seeking “pleasure, tourism, or medical treatment.”<sup>86</sup> Other than for medical treatment, B-2 is the proper visa for visitors whose purpose in traveling to the United States includes “tourism, vacation (holiday), amusement, visits with friends or relatives, rest” or anything “recreational in nature.”<sup>87</sup> The visa does not apply to “students, temporary workers, crewmen, [or] journalists[.]”<sup>88</sup>

B-2 applicants apply in their home country’s U.S. embassy or consulate.<sup>89</sup> After the application is reviewed, an interview is conducted for all applicants between the ages of fourteen and seventy-nine, with “few exceptions.”<sup>90</sup> Among other requirements, B-2 visa applicants must prove that they “plan to

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83. *Visitor Visas—Business and Pleasure*, U.S. DEP’T OF STATE, [http://travel.state.gov/visa/temp/types/types\\_1262.html](http://travel.state.gov/visa/temp/types/types_1262.html) (last visited Sept. 12, 2011) [hereinafter *Visitor Visas*]. See 8 U.S.C. § 1201 (2004).

84. See generally 8 C.F.R. § 214. See also *Visitor Visas*, *supra* note 83 (giving a general overview of the process for obtaining a visa, including the qualifications needed, the required documentation, and the application process).

85. See 8 C.F.R. § 214. See also *Visitor Visas*, *supra* note 83.

86. *Visitor Visas*, *supra* note 83.

87. *Id.*

88. *Id.*

89. *Id.*

90. *Id.*

remain [in the United States] for a specific, limited period.”<sup>91</sup> They must also provide evidence of “intent to depart the United States, and arrangements made to cover the costs of the trip . . .”<sup>92</sup> Applicants may also, “depending on individual circumstances,” be required to show documentation substantiating the trip’s purpose.<sup>93</sup> Consular officials can also request a physical and/or mental examination.<sup>94</sup>

In addition to the typical B-2 visitor requirements outlined above, patients seeking medical treatment must supply additional information, which is discussed in part D. 2. of this Comment.

Consular officials often also require that visa applicants prove that they have the means to pay for all medical treatment, travel, and lodging in full.<sup>95</sup> Moreover, many hospitals that accept foreign patients require a retainer to be fully paid before the patient will be admitted.<sup>96</sup> The only potential benefit to applying for a B-2 visa for medical treatment, as opposed to a B-2 visa for recreational activity, is the possibility of getting the applicant’s interview expedited.<sup>97</sup> However, there is no requirement or guarantee that an interview will be expedited for medical travelers.<sup>98</sup>

Visas only allow foreign citizens to request entry with an

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91. *Id.*

92. *Id.*

93. *Id.*

94. 8 U.S.C. § 1201.

95. *See id.* *See also* Valencia interview, *supra* note 8.

96. *See International Patient Center*, MASS. GEN. HOSP., <http://www.massgeneral.org/international/about/> (last visited Sept. 13, 2012); *International Patient Center*, DUKE U. HOSP., [http://www.dukehealth.org/locations/duke\\_hospital/services/international\\_patient\\_center](http://www.dukehealth.org/locations/duke_hospital/services/international_patient_center) (last visited Sept. 13, 2012); *FAQs for International Patients*, MEM’L SLOAN-KETTERING CANCER CENTER, <http://www.mskcc.org/cancer-care/international-patients/international-patients-faqs> (last visited Sept. 13, 2012); *Methodist International Charges, Billing, and Payment*, METHODIST HOSP., <http://www.methodisthealth.com/FinancialCounseling> (last visited Sept. 13, 2012); *Answers to Your Questions*, HENRY FORD HOSP., <http://www.henryford.com/body.cfm?id=49324> (last visited Sept. 13, 2012); *IMS Patient Financial Policy*, STANFORD HOSP. & CLINICS, <http://stanfordhospital.org/PDF/imsPatientFinancialPolicy.pdf> (last visited Sept. 13, 2012).

97. Valencia Interview, *supra* note 8.

98. *See id.* *See also Visitor Visas*, *supra* note 83.

inspector at a United States port-of-entry.<sup>99</sup> If a B-2 visitor is accepted at the port-of-entry into the United States, they “will be admitted for a minimum period of six months [and up to a year], regardless of whether less time is requested, provided that any required passport is valid.”<sup>100</sup> Once in the country, staying longer than the time authorized by the United States Department of Homeland Security (DHS) may cause the patient “to [become] ineligible for a visa in the future for return travels to the U.S.”<sup>101</sup> However, visa holders can extend their visa with the United States Citizenship and Immigration Services (USCIS) if they meet certain criteria and provide the proper documentation.<sup>102</sup> The criteria and paperwork required to extend a visa and what happens when a visa expires is discussed in the following section.

## *B. Common Obstacles Encountered*

### *1. Lengthy Waits*

As explained above, the first step a patient seeking entry into the United States must take is to deliver all required forms and documentation for a B-2 visitor visa to a U.S. embassy or consulate in their home country.<sup>103</sup> With “few exceptions,” an interview with a consular official will be the next step.<sup>104</sup> The wait time for an interview can vary greatly depending on the patient’s home country.

In some cities, like Tokyo or Mexico City,<sup>105</sup> an interview

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99. *Visitor Visas*, *supra* note 83.

100. 8 C.F.R. § 214.2(b) (2012).

101. *Visitor Visas*, *supra* note 83.

102. *Id.* See also *USCIS - I-539, Application To Extend/Change Nonimmigrant Status*, U.S. CITIZENSHIP AND IMMIGRATION SERVS., <http://www.uscis.gov/portal/site/uscis/menuitem.5af9bb95919f35e66f614176543f6d1a/?vgnextoid=94d12c1a6855d010VgnVCM10000048f3d6a1RCRD&vgnnextchannel=9cf75869c9326210VgnVCM100000082ca60aRCRD> (last visited Sept. 12, 2012).

103. See *Visitor Visas*, *supra* note 83. See generally 8 C.F.R. § 214 (2012) (explaining that requirements for admission, readmission, extension, and approval of nonimmigrants in America as a student, business professional, victim, or a spouse or child of a permanent resident).

104. See *Visitor Visas*, *supra* note 83.

105. *Visa Wait Times Results Page (Tokyo)*, U.S. DEP’T OF STATE,

appointment for a B-2 visitor applicant typically is scheduled only three days after he or she turns in the required documentation.<sup>106</sup> Many countries have a wait time ranging from a few days to several weeks: London, England typically schedules B-2 visitor interview appointments within forty-six days;<sup>107</sup> Buenos Aires, Argentina averages two days;<sup>108</sup> Sanaa, Yemen averages fifty-nine days;<sup>109</sup> Abu Dhabi, United Arab Emirates averages thirty-three days;<sup>110</sup> and Vancouver, Canada averages seventy-three days.<sup>111</sup> Caracas, Venezuela typically schedules visitor visa interviews a staggering 164 days after processing an applicant's paperwork.<sup>112</sup>

Interview wait times are typically shorter for student visas, exchange visas, and "all other nonimmigrant" visitor visas as opposed to B-2 visas.<sup>113</sup> For example, while a B-2 visa applicant to Montreal or Sanaa must typically wait for an interview

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[http://travel.state.gov/visa/temp/wait/wait\\_4788.html?post=Tokyo&x=30&y=1](http://travel.state.gov/visa/temp/wait/wait_4788.html?post=Tokyo&x=30&y=1) (last visited Aug. 22, 2012) [hereinafter *Tokyo Wait Times*]; *Visa Wait Times Results Page (Mexico City)*, U.S. DEP'T OF STATE, [http://travel.state.gov/visa/temp/wait/wait\\_4788.html?post=Mexico+City&x=79&y=10](http://travel.state.gov/visa/temp/wait/wait_4788.html?post=Mexico+City&x=79&y=10) [hereinafter *Mexico City Wait Times*].

106. *Tokyo Wait Times*, *supra* note 105.

107. *Visa Wait Times Results Page (London)*, U.S. DEP'T OF STATE, [http://travel.state.gov/visa/temp/wait/wait\\_4788.html?post=London&x=61&y=16](http://travel.state.gov/visa/temp/wait/wait_4788.html?post=London&x=61&y=16) (last updated Aug. 21, 2012) [hereinafter *London Wait Times*].

108. *Visa Wait Times Results Page (Buenos Aires)*, U.S. DEP'T OF STATE, [http://travel.state.gov/visa/temp/wait/wait\\_4788.html?post=Buenos+Aires&x=84&y=4](http://travel.state.gov/visa/temp/wait/wait_4788.html?post=Buenos+Aires&x=84&y=4) (last updated Aug. 21, 2012).

109. *Visa Wait Times Results Page (Sanaa)*, U.S. DEP'T OF STATE, [http://travel.state.gov/visa/temp/wait/wait\\_4788.html?post=Sanaa&x=60&y=13](http://travel.state.gov/visa/temp/wait/wait_4788.html?post=Sanaa&x=60&y=13) (last updated Aug. 21, 2012) [hereinafter *Sanaa Wait Times*].

110. *Visa Wait Times Results Page (Abu Dhabi)*, U.S. DEP'T OF STATE, [http://travel.state.gov/visa/temp/wait/wait\\_4788.html?post=Abu+Dhabi&x=85&y=10](http://travel.state.gov/visa/temp/wait/wait_4788.html?post=Abu+Dhabi&x=85&y=10) (last updated Aug. 21, 2012) [hereinafter *Abu Dhabi Wait Times*].

111. *Visa Wait Times Results Page (Vancouver)*, U.S. DEP'T OF STATE, [http://travel.state.gov/visa/temp/wait/wait\\_4788.html?post=Vancouver&x=52&y=14](http://travel.state.gov/visa/temp/wait/wait_4788.html?post=Vancouver&x=52&y=14) (last updated Aug. 21, 2012) [hereinafter *Vancouver Wait Times*].

112. *Visa Wait Times Results Page (Caracas)*, U.S. DEP'T OF STATE, [http://travel.state.gov/visa/temp/wait/wait\\_4788.html?post=Caracas&x=26&y=19](http://travel.state.gov/visa/temp/wait/wait_4788.html?post=Caracas&x=26&y=19) (last updated Aug. 21, 2012) [hereinafter *Caracas Wait Times*].

113. See *Tokyo Wait Times*, *supra* note 105; *Mexico City Wait Times*, *supra* note 105; *London Wait Times*, *supra* note 107; *Sanaa Wait Times*, *supra* note 109; *Abu Dhabi Wait Times*, *supra* note 110; *Vancouver Wait Times*, *supra* note 111; *Caracas Wait Times*, *supra* note 112.

between four<sup>114</sup> and fifty-nine days,<sup>115</sup> respectively, applicants seeking student or exchange visitor visas can typically schedule an interview within one to five days.<sup>116</sup> Moreover, an applicant for a student or exchange visitor in Caracas can typically be interviewed in only five days.<sup>117</sup> Consular officials may expedite a visa application and interview if they choose,<sup>118</sup> but there are no regulations that require them to do so.<sup>119</sup>

In reality, State Department regulations do little to differentiate a visitor for medical treatment from a recreational visitor.<sup>120</sup> This results in a system that often places the least amount of urgency on B-2 visitor applications.<sup>121</sup>

The U.S. Visa Waiver Program (VWP) offers an alternative path to legal entry without the burden or wait associated with procuring a visa.<sup>122</sup> Thirty-six nations participate in the U.S. VWP.<sup>123</sup> The program “enables [foreign] nationals . . . to travel to the United States for tourism or business (visitor [B] visa purposes only) for stays of 90 days or less without obtaining a visa.”<sup>124</sup>

However, for two reasons, the program is a poor fit for many visitors seeking medical treatment. First, patients can be admitted under the VWP for a maximum of ninety days.<sup>125</sup> This length of stay cannot be extended, unlike a foreign patient who

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114. *Visa Wait Times Results Page (Montreal)*, U.S. DEPT OF STATE, [http://travel.state.gov/visa/temp/wait/wait\\_4788.html?post=Montreal&x=86&y=13](http://travel.state.gov/visa/temp/wait/wait_4788.html?post=Montreal&x=86&y=13) (last updated Aug. 21, 2012) [hereinafter *Montreal Wait Times*].

115. *Sanaa Wait Times*, *supra* note 109.

116. *Id.*; *Montreal Wait Times*, *supra* note 114.

117. *Caracas Wait Times*, *supra* note 112.

118. Valencia interview, *supra* note 8. *See also* 8 C.F.R. § 214.2; *Visitor Visas*, *supra* note 83.

119. *See* 8 C.F.R. § 214.2 (2012).

120. *See Visitor Visas*, *supra* note 83.

121. *See Mexico City Wait Times*, *supra* note 105; *London Wait Times*, *supra* note 107; *Sanaa Wait Times*, *supra* 109; *Caracas Wait Times*, *supra* note 113.

122. *See Visa Waiver Program*, U.S. DEPT OF STATE, [http://travel.state.gov/visa/temp/without/without\\_1990.html](http://travel.state.gov/visa/temp/without/without_1990.html) (last visited Aug. 23, 2012) [hereinafter *Visa Waiver Program*].

123. *Id.*

124. *Id.*

125. *Visa Waiver Program*, *supra* note 122.

holds a B-2 visitor visa.<sup>126</sup> Although a patient may have a good-faith belief that treatment will conclude before ninety days pass, an unexpected complication may arise or the provider may discover a previously unknown ailment that could extend the treatment period. Overstaying an authorized visit in the United States may result in a patient being denied entry in the future.<sup>127</sup>

Second, the number of countries participating in the Visa Waiver Program is limited.<sup>128</sup> VWP requires a nation to meet strict “law enforcement and security-related” requirements to be admitted into the program by the United States government.<sup>129</sup> These requirements likely preclude many countries from being admitted into the VWP. Moreover, the list includes no South American or Middle Eastern countries,<sup>130</sup> two of the largest groups of consumers of American inbound healthcare.<sup>131</sup>

## 2. *Burdensome Paperwork Requirements*

In addition to the typical information required for a visitor visa application, foreign medical visitors must provide additional evidence regarding their medical needs.<sup>132</sup> Among other things, medical visitors must prove that they can fully pay for their treatment, travel, lodging, and living expenses for the duration of their stay.<sup>133</sup> They must present a letter from a U.S. hospital showing willingness to treat the patient.<sup>134</sup> In addition,

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126. *See id.*

127. *See generally* 8 U.S.C. § 1182 (2006). An alien is inadmissible into the United States if (a) he or she “was unlawfully present in the United States for a period of more than 180 days but less than 1 year, voluntarily departed the United States... and again seeks admission within 3 years of the date of such alien’s departure or removal,” or (b) he or she “has been unlawfully present in the United States for one year or more, and who again seeks admission within 10 years of the date of such alien’s departure or removal from the United States.” 8 U.S.C. § 1182(a)(9)(B)(i)(I)–(II) (2006). *See also* Valencia interview, *supra* note 8.

128. *See Visa Waiver Program, supra* note 122.

129. *Id.*

130. *See id.*

131. *See* CONSUMERS IN SEARCH OF VALUE, *supra* note 6, at 19.

132. *See Visitor Visas, supra* note 83.

133. *Id.*

134. *Id.*

the applicant must supply a “medical diagnosis from a local physician,” as well as “the reason the applicant requires treatment in the United States.”<sup>135</sup>

The final requirement makes little business sense. In a competitive marketplace, if a patient could receive the same treatment in his or her home country as he or she could receive in the United States, a market-based immigration policy would welcome the patient with open arms. Why turn away a patient who is willing to fully pay for treatment in the United States? The policy, in more basic terms, is akin to a high-quality grocery store refusing to serve a willing customer because the customer lives closer to one of the grocer’s competitors that carries the same product. A truly market-based approach to healthcare and immigration policy would not ask the applicant for a reason for seeking American treatment.<sup>136</sup>

Although there is scant evidence that this policy has imposed a serious impediment for foreign patients, it appears that consulates can refuse patients if they can receive the same treatment in their home country.<sup>137</sup> At least one anecdotal story exists of a Chinese patient whose initial visa application was denied for this reason.<sup>138</sup> However, even more alarming for foreign patients whose visa applications are denied is that there are no adequate administrative or judicial venues to appeal a consular visa denial.<sup>139</sup> Some visa applications are administratively reviewed by the State Department’s visa office, but the request may only come from a consular officer, not from the visa applicant.<sup>140</sup>

Since 1950, courts have followed the doctrine of consular

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135. *Id.*

136. See generally Murray N. Rothbard, *Free Market: The Concise Encyclopedia of Economics*, LIBR. OF ECON. AND LIBERTY, <http://www.econlib.org/library/Enc/FreeMarket.html> (last visited Aug. 22, 2012) (explaining that exchange in a free market occurs when both parties expect to benefit from the exchange).

137. See Coleman interview, *supra* note 42.

138. *Id.*

139. See Donald S. Dobkin, *Challenging the Doctrine of Consular Nonreviewability in Immigration Cases*, 24 GEO. IMMIGR. L.J. 113, 114 (2010).

140. *Id.*

nonreviewability.<sup>141</sup> That year, the Supreme Court decided *United States ex rel. Knauff v. Shaughnessy*,<sup>142</sup> establishing that a consular officer's decision to grant or deny a visa application is not subject to judicial review.<sup>143</sup> Some courts have attempted to create exceptions to the doctrine, but none have gained traction.<sup>144</sup> For now, it appears visa applicants have no recourse should a consular official fail to find his or her reason for seeking treatment in the United States compelling.<sup>145</sup>

### 3. *Unknown Length of Stay*

When foreign patients arrive at their United States port-of-entry, they must inform an official from Customs and Border Patrol regarding how long they intend to stay in the United States.<sup>146</sup> A visa may be approved for anywhere from six months to one year.<sup>147</sup> However, this step poses a problem for many patients who do not know the extent of their illness or their expected length of treatment.<sup>148</sup> Since many patients have yet to visit with their American physician, typically no treatment plan or prognosis has been developed yet.<sup>149</sup> To be approved for a visa, patients must only present evidence that an American provider is willing to treat the patient.<sup>150</sup> Therefore, patients sometimes underestimate the length of time they expect to be in the United States.<sup>151</sup> As a result, they must go

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141. *Id.* The doctrine is also sometimes known as consular absolutism. See Maria Zas, *Consular Absolutism: The Need for Judicial Review in the Adjudication of Immigrant Visas for Permanent Residence*, 37 J. MARSHALL L. REV. 577, 578 (2004).

142. *Knauff v. Shaughnessy*, 338 U.S. 537, 544 (1950) ("Whatever the procedure authorized by Congress is, it is due process as far as an alien denied entry is concerned.").

143. Dobkin, *supra* note 139, at 114.

144. *Id.* at 143.

145. *Id.* at 114.

146. See *Visitor Visas*, *supra* note 83 (stating that a Customs and Border Patrol "official will determine the length of your visit on the Arrival-Department Record (Form I-94)").

147. 8 C.F.R. § 214.2(b)(1)–(2) (2012).

148. See Coleman interview, *supra* note 42.

149. See *id.*

150. *Visitor Visas*, *supra* note 83.

151. See generally Valencia interview, *supra* note 8 (describing how treatment time

through the burdensome process of organizing and filing a visa extension application while undergoing medical treatment.<sup>152</sup>

#### 4. *Visa Extension Process*

The last thing many patients likely have on their mind during serious medical treatment is the status of their B-2 visa. Most would agree that patients should be focused on regaining their health. However, any time between six months and one year of entering the United States, foreign patients must submit an I-539 form with accompanying documentation to request an extension of their B-2 visitor visa.<sup>153</sup> Failing to timely submit an I-539 could result in unlawful presence in the United States, which in turn could result in being denied future entry into the United States for subsequent treatments.<sup>154</sup>

The government typically grants visa extension requests for up to six months, meaning that a patient may have to submit a new I-539 every 180 days.<sup>155</sup> In addition to filling out the five-page I-539,<sup>156</sup> the patient must also submit answers and documentation for financial questions similar to those present in the original application.<sup>157</sup>

The wait time for the approval or denial of the extension by U.S. Citizenship and Immigration Services (USCIS) can often cause problems for preoccupied patients.<sup>158</sup> It often takes

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can change after the patient has been given length of time for visa stay).

152. See Coleman interview, *supra* note 42.

153. See *Extend Your Stay*, U.S. CITIZENSHIP AND IMMIGRATION SERVS., <http://www.uscis.gov/portal/site/uscis/menuitem.eb1d4c2a3e5b9ac89243c6a7543f6d1a/?vgnextoid=cab23e4d77d73210VgnVCM100000082ca60aRCRD&vgnextchannel=cab23e4d77d73210VgnVCM100000082ca60aRCRD> (last updated Mar. 22, 2010) [hereinafter *Extend Your Stay*]. See also 8 C.F.R. § 214.2(b)(1) (2012).

154. See *Visitor Visas*, *supra* note 83. See also 8 U.S.C. § 1182 (2006) (discussing consequences of unlawful presence in the United States).

155. See Valencia interview, *supra* note 8.

156. *USCIS - I-539, Application To Extend/Change Nonimmigrant Status*, *supra* note 102.

157. See *Form M-752, Helpful Filing Tips for Form I-539*, U.S. CITIZENSHIP AND IMMIGRATION SERVS. (May 28, 2009), <http://www.uscis.gov/files/form/m-752.pdf>.

158. See Valencia interview, *supra* note 8 (detailing the difficulty for patients to obtain extensions).

months for USCIS service centers to approve visa extensions.<sup>159</sup> There is no method for expediting an I-539 request.<sup>160</sup> If an I-539 is filed shortly before the patient’s B-2 expires, the patient often must wait months in a state of uncertainty, wondering if his or her extension application will be approved or denied.<sup>161</sup>

IV. POTENTIAL SOLUTIONS TO INCREASE ACCESSIBILITY

A. *New “Medical Treatment” Visa Category*

There are significant disadvantages to every legal avenue that a foreign patient may choose to access American healthcare. A patient can choose to enter on a B-2 visa, but will potentially face long wait times,<sup>162</sup> burdensome paperwork requirements,<sup>163</sup> and frequent extensions.<sup>164</sup> On the other hand, a patient from a participating country could choose to enter the United States through the Visa Waiver Program to avoid wait times and paperwork requirements, but would likely be out of luck if treatment lasted longer than three months.<sup>165</sup>

In an increasingly global medical marketplace,<sup>166</sup> where many companies are directly marketing American healthcare

159. See *USCIS Processing Time Information for our California Service Center*, U.S. CITIZENSHIP AND IMMIGRATION SERVS. (Oct. 19, 2012), <https://egov.uscis.gov/cris/processTimesDisplayInit.do> [hereinafter *Processing Times*] (follow the “CSC-California Service Center” link) (displaying the processing timeframe for an I-539 “Application to Extend/Change Nonimmigrant Status” as 2.5 months).

160. Valencia interview, *supra* note 8. See USCIS WEBSITE, <http://www.uscis.gov/portal/site/uscis>.

161. See *Processing Times*, *supra* note 159; Valencia interview, *supra* note 8 (detailing the time consuming extension process).

162. See *Processing Times*, *supra* note 159; Valencia interview, *supra* note 8.

163. See *generally Visitor Visas*, *supra* note 83.

164. See *generally Extend Your Stay*, *supra* note 153 (describing the need to timely file an extension to avoid unlawful presence). See also Valencia interview, *supra* note 8 (describing the six-month visa grant).

165. See *Visa Waiver Program*, *supra* note 122.

166. See *CONSUMERS IN SEARCH OF VALUE*, *supra* note 6, at 15 (anticipating lost domestic spending in the United States by outbound medical tourists will rise from approximately \$15.9 billion USD in 2008 to \$373 billion USD in 2017). Spending by inbound medical tourists in the United States was predicted to total approximately \$4.7 billion USD in 2008, and is expected to rise to \$8 billion USD by 2017. See *id.* at 24.

provider services to foreign nationals,<sup>167</sup> the United States should establish a “medical treatment” visa category to delineate medical visitors from recreational sightseers, ease the burden of accessing United States medical technology and services, and actively promote American providers. Richard E. Wainerdi,<sup>168</sup> the President and CEO of the Texas Medical Center,<sup>169</sup> the world’s largest medical campus, has recently drawn attention to this critical issue by calling for the immediate creation of this type of medical visitor visa.<sup>170</sup>

### 1. *Increased Duration of Stay*

Under the current system, B-2 medical tourists are allowed entry for six to twelve months for treatment.<sup>171</sup> If the visitor’s visa approaches expiration, an extension must be promptly filed every six months to avoid unlawful presence in the country.<sup>172</sup> As discussed above, potentially lengthy wait times can add further uncertainty to an already stressful scenario.<sup>173</sup> However, applicants for different categories of U.S. visas do not experience many of these difficulties.<sup>174</sup>

Student visas, for example, would provide a strong model for any potential medical treatment visa.<sup>175</sup> F-1 visas are

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167. See CONSUMERS IN SEARCH OF VALUE, *supra* note 6, at 24–25; Vequist & Valdez, *supra* note 27, at 11.

168. *Texas Medical Center Corporation Executives*, TEX. MED. CENTER, <http://texasmedicalcenter.org/texas-medical-center-corporation-executives/> (last visited Sept. 12, 2012).

169. *Id.*

170. See Hankamer, *supra* note 76, at 24.

171. 8 C.F.R. § 214.2(b)(1)–(2) (2012).

172. See *Visitors Visas*, *supra* note 83. See also 8 U.S.C. § 1182 (2006) (detailing unlawful presence); 8 C.F.R. § 214.2 (b).

173. See discussion *infra* Part III.B.1.

174. See generally *Visa Availability & Priority Dates*, U.S. CITIZEN AND IMMIGRATION SERVS., <http://www.uscis.gov/portal/site/uscis/menuitem.eb1d4c2a3e5b9ac89243c6a7543f6d1a/?vgnnextoid=aa290a5659083210VgnVCM100000082ca60aRCRD&vgnnextchannel=aa290a5659083210VgnVCM100000082ca60aRCRD> (last updated June 15, 2011) (listing the different type of visas available and their requirements). See also Valencia interview, *supra* note 8 (discussing how much easier a student visa is to obtain and how medical tourist visas should mirror that process).

175. See generally *Becoming a Nonimmigrant Student in the United States*, U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT, [http://www.ice.gov/sevis/becoming\\_](http://www.ice.gov/sevis/becoming_)

appropriate for “students attending a university, college, high school, private elementary school, seminary, conservatory or other academic institutions.”<sup>176</sup>

Similarly, M-1 visas are appropriate for students attending “vocational or other recognized nonacademic institutions.”<sup>177</sup> However, many of the F-1 and M-1 visa eligibility requirements are simpler and more straightforward than those required of a B-2 medical visitor.<sup>178</sup> An M-1 or F-1 applicant must “[1] have a residence abroad, with no immediate intention of abandoning that residence, [2] intend to depart from the United States upon completion of the course of study; and [3] possess sufficient funds to pursue the proposed course of study.”<sup>179</sup>

A consular interview for applicants aged fourteen to seventy-nine is still required, as well as several documents proving the requirements above.<sup>180</sup> A foreign student must only provide a certificate of eligibility provided by the American school he or she will be attending, an online visa application, a valid passport, a photo, and two fee receipts.<sup>181</sup> Moreover, to be eligible for the visa, an applicant need not prove the necessity of coming to the United States for an education, nor must an applicant prove an equivalent education is unavailable in their home country.<sup>182</sup> A shift to a medical treatment visa based on the student visa model would provide reduced paperwork burden for patients and would entice foreign patients that may otherwise have been deterred by the potentially lengthy, arduous visa approval system.

The most significant benefit of modeling a potential medical visa after the existing student categories is the advantage

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nonimmigrant\_student\_52007.htm (last visited Aug. 23, 2012) (defining and explaining visas available to become a nonimmigrant student in the United States).

176. *Student Visas*, U.S. DEPT OF STATE, [http://travel.state.gov/visa/temp/types/types\\_1268.html](http://travel.state.gov/visa/temp/types/types_1268.html) (last visited Oct. 22, 2012) [hereinafter *Student Visas*]. See also 8 C.F.R. § 214.2(f).

177. See *Student Visas*, *supra* note 176. See also 8 C.F.R. § 214.2(m).

178. See *Student Visas*, *supra* note 176. Cf. *Visitor Visas*, *supra* note 83.

179. See *Student Visas*, *supra* note 176.

180. *Id.*

181. *Id.*

182. See *id.*

provided by the flexible duration of the visa.<sup>183</sup> For both F-1 and M-1 visas, students are informed that they “will usually be admitted for the duration of [their] student status.”<sup>184</sup> As long as the visa holder maintains full-time student status,<sup>185</sup> they may remain in the country until the completion of their studies.<sup>186</sup> An example provided by the Secretary of State’s website provides a straightforward explanation of the incredible flexibility of the duration standard:

If you have a visa that is valid for five years that will expire on January 1, 2009, and you are admitted into the U.S. for the duration of your studies . . . , you may stay in the U.S. as long as you are a full time student. Even if January 1, 2009 passes and your visa expires while in the U.S., you will still be in legal student status.<sup>187</sup>

F-1 and M-1 students also receive between thirty and sixty days to prepare to depart the country when their program concludes.<sup>188</sup> The most important aspect of the duration standard is that students need not constantly apply for extensions.<sup>189</sup> As long as a student remains enrolled full time, even overstaying the expected timeframe requires no extension application.<sup>190</sup>

Framers of a new medical treatment visa category could adopt many of the standards and requirements from the existing student visa categories. Simplified visa requirements and less burdensome paperwork could be the framers’ starting point. A “duration of treatment” requirement would allow patients to receive medical care without the constant worry of extension applications, deadlines, and waiting periods.

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183. *See id.*

184. *Id.*

185. Full-time status must result in a “full course of study.” 8 C.F.R. § 214.2(f)(5)(i) (2012). A “full course of study must lead to the attainment of a specific educational or professional objective.” *Id.* § 214.2(f)(6)(i). The regulations detail guidelines for programs that fulfill the “full course of study requirement[.]” *Id.* § 214.2(f)(6)(i)(A)–(C).

186. *Student Visas, supra* note 176.

187. *Id.*

188. *See id.*

189. *See id.*

190. *Id.*

Beginning with these simple changes in law would benefit patients, hospitals, and the federal government. Patients would no longer need to file extensions every six months. Hospitals would be the beneficiaries of greater business resulting from simplified, pragmatic visa guidelines. And the federal government would be able to more easily delineate between recreational and medical visitors, to reduce wait times for foreign patients, and to decrease the amount of paperwork that requires processing.

## 2. Reporting Requirement for Hospitals

The federal government is able to forego a semiannual extension requirement for F-1 and M-1 student visas because schools with international students must regularly communicate with the federal government regarding the status of students enrolled in their programs.<sup>191</sup> The reporting requirement placed on schools allows the government to track all international student visitors without regular direct contact with students.<sup>192</sup>

Since 2002, schools have submitted information on their F-1 and M-1 international students through the Student and Exchange Visitor Information System (SEVIS).<sup>193</sup> The program that administers SEVIS, the Student and Exchange Visitor Program (SEVP), “acts as a bridge for government organizations that have an interest in foreign students.”<sup>194</sup> Every school with an M-1 or F-1 visa student has a designated school official (DSO) who is the official contact with the federal government.<sup>195</sup> SEVIS “enables schools and program sponsors to transmit mandatory information and event notifications via the Internet.”<sup>196</sup> A school’s DSO must report when the student

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191. See *Student and Exchange Visitor Program*, U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT, <http://www.ice.gov/sevis> (last visited Aug. 27, 2012) [hereinafter *Student and Exchange Visitor Program*].

192. *Id.*; *Student Visas*, *supra* note 176.

193. *Student and Exchange Visitor Program*, *supra* note 191.

194. See *id.*

195. See *Fact Sheet: SEVIS Reporting Requirements for Designated School Officials*, U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT (June 2005), <http://www.ice.gov/doclib/sevis/factsheet/061605dsoreporting.pdf>.

196. *Student Visas*, *supra* note 176.

starts an academic program, when the student has an active status at the school every semester, whether a student transfers in or out of a school, whether a student has graduated or otherwise completed his or her course of study, and any events that may result from academic disciplinary action, criminal conviction, or early graduation.<sup>197</sup>

Schools are under no obligation to become a “SEVP Approved School”<sup>198</sup> with a DSO, but if they do not comply with the federal SEVP requirements they cannot accept any F-1 or M-1 international students.<sup>199</sup> Likewise, although some hospitals likely would comply with federal regulations for the opportunity to pursue international business, many would not.<sup>200</sup>

Framers of a new medical treatment visa could either establish a system similar to SEVIS, or merge a new hospital-based international patient reporting requirement into the framework of the SEVIS. Hospitals choosing to participate in the new program would be required to designate one or more persons to serve as the main point of communication with the federal government. This person could work in an international patient department that exists today in many hospitals that market to international patients.<sup>201</sup> This designee would be required to report a foreign patient’s entrance into the provider’s facility for their first treatment, status checks every three months, and a final report when the patient ultimately leaves

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197. *Fact Sheet: SEVIS Reporting Requirements for Designated School Officials*, *supra* note 195.

198. *SEVP Approved Schools*, U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT, [http://studyinthestates.dhs.gov/assets/pdfs/Certified\\_School\\_List\\_9-12-12.pdf](http://studyinthestates.dhs.gov/assets/pdfs/Certified_School_List_9-12-12.pdf) (last updated Sept. 5, 2012).

199. *See* 8 C.F.R. § 214.3(h) (2012) (requiring that all schools who wish to host nonimmigrant students comply with federal SEVP requirements).

200. *See* Valencia interview, *supra* note 8 (stating that in an emergency, a hospital will treat patients without regard to visa status). *See also* Coleman interview, *supra* note 42 (explaining that it would be difficult for hospitals to comply with visa reporting requirements).

201. *See Out-of-State & International Patients*, JOHNS HOPKINS MED., [http://www.hopkinsmedicine.org/patient\\_care/out\\_state.html](http://www.hopkinsmedicine.org/patient_care/out_state.html) (last visited Oct. 22, 2012); *Center for International Patients*, U. OF CHICAGO MED., <http://www.uchospitals.edu/specialties/international-patients> (last visited Oct. 22, 2012).

the provider's care. Providers would also report relevant, significant events that may occur over the course of a patient's treatment, including any events that may jeopardize a patient's visa and that come to the attention of hospital staff.

The benefit of this arrangement would be less hassle for patients because they no longer need to file extension requests every six months. Moreover, patients could fully focus on treatment without the uncertainty associated with waiting period and processing times.<sup>202</sup> This arrangement would also benefit the federal government by providing regular updates on international patients through a paperless, real-time Internet system on international patients.

### *B. International Medical Visitor Agreement*

An international medical cooperation treaty, similar to the North American Free Trade Agreement (NAFTA), could provide numerous benefits for U.S. and foreign patients.<sup>203</sup>

#### *1. Comparison to NAFTA*

NAFTA is an arrangement between the United States, Mexico, and Canada to "create special economic and trade relationships" between those three countries.<sup>204</sup> One provision of NAFTA "allows citizens of Canada and Mexico, as NAFTA professionals, to work in the U.S while performing a prearranged business activity for a U.S. or foreign employer."<sup>205</sup> A Mexican or Canadian citizen can typically enter the United States with a nonimmigrant NAFTA Professional (TN) visa if their profession is listed as one covered under the agreement, they have a prearranged full-time or part-time job, they have the qualifications for that profession, and their "position in the U.S. requires a NAFTA professional."<sup>206</sup>

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202. See Valencia interview, *supra* note 8.

203. See Pub. L. No. 103-82, 107 Stat. 2057 (codified at 19 U.S.C. § 3301 (1993)).

204. See *Visas for Mexican and Canadian NAFTA Professional Workers*, U.S. SECRETARY OF STATE, [http://travel.state.gov/visa/temp/types/types\\_1274.html](http://travel.state.gov/visa/temp/types/types_1274.html) (last visited Aug. 23, 2012).

205. *Id.*

206. *Id.*

The dominant purpose of NAFTA was to open borders to trade and increase marketplace competition.<sup>207</sup> Despite having different economies, the agreement was signed by all three countries because it was believed that it would serve the economic interests of all three nations.<sup>208</sup>

Similarly, citizens from different nations have different reasons to travel for medical care.<sup>209</sup> Some travel to find the best technology and services,<sup>210</sup> others travel to find inexpensive care,<sup>211</sup> and more travel to avoid lengthy wait times in their home countries.<sup>212</sup>

No matter the motives of citizens from these different countries, an international agreement that reduces barriers to creating an open international medical market can serve the best interests of all nations that choose to participate.<sup>213</sup>

## 2. *Purpose and Benefits*

An international agreement of this scope and magnitude

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207. See President Bill Clinton, Remarks on Signing the North American Free Trade Agreement Implementation Act (Dec. 8, 1993), in PUBLIC PAPERS OF THE PRESIDENTS OF THE UNITED STATES: WILLIAM J. CLINTON, 1993 BOOK II 2140 (1994) (“NAFTA will tear down trade barriers between our three nations. It will create the world’s largest trade zone and create 200,000 jobs in this country by 1995 alone.”).

208. The objectives of NAFTA are outlined in Article 102 of the Agreement:

- a) eliminate barriers to trade in, and facilitate the cross-border movement of, goods and services between the territories of the Parties;
- b) promote conditions of fair competition in the free trade area;
- c) increase substantially investment opportunities in the territories of the Parties;
- d) provide adequate and effective protection and enforcement of intellectual property rights in each Party’s territory;
- e) create effective procedures for the implementation and application of this Agreement, for its joint administration and for the resolution of disputes; and
- f) establish a framework for further trilateral, regional and multilateral cooperation to expand and enhance the benefits of this Agreement.

North American Free Trade Agreement art. 102, Dec. 8, 1993, 32 I.L.M. 297.

209. See discussion *supra* Part II.B.

210. See Ehrbeck et al., *supra* note 32, at 4.

211. See CONSUMERS IN SEARCH OF VALUE, *supra* note 6, at 13.

212. Ehrbeck et al., *supra* note 32, at 4.

213. *Id.* at 2, 3.

could take on many different forms. The main purpose would be to allow a simplified process to allow citizens from one signatory nation to enter another signatory's borders to receive medical care. Initially, the offer to sign such an agreement could be extended to the countries currently approved under the United States' Visa Waiver Program.<sup>214</sup> These nations are rigorously vetted for security reasons and ultimately approved by the federal government.<sup>215</sup>

The specific details of such an agreement are too large a topic to discuss fully in this Comment.<sup>216</sup> Nevertheless, an expanded medical marketplace would result in greater access to high quality care for other nations, less expensive care for American citizens, and a more competitive, market-driven international marketplace that could ultimately lead to lower prices in the United States.<sup>217</sup> Moreover, an international medical agreement would provide two perhaps less obvious benefits: greater safety and quality control for patients, and clearer jurisdictional guidelines for filing malpractice claims.<sup>218</sup>

### 3. *Ancillary Benefits for American Patients Abroad*

#### a. *Patient Safety*

The foremost concern for most Americans traveling abroad for medical care is whether they will be treated in safe, clean conditions.<sup>219</sup> Americans abroad often lack the safeguards that

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214. See *Visa Waiver Program*, *supra* note 122, at 30.

215. See *id.*

216. See generally Marsha Proctor Killen, *Healthcare Reform and the Demise of Medical Tourism?*, *MED. TOURISM MAG.*, July-Aug. 2009, at 42, available at <http://www.medicaltourismmag.com/download/issue-11.pdf> (discussing future plans in the medical tourism field in light of current healthcare reforms).

217. See Dana A. Forgione & Pamela C. Smith, *Medical Tourism and its Impact on the US Health Care System*, 34 *J. HEALTH CARE FIN.* 27, 33–34 (2006); CONSUMERS IN SEARCH OF VALUE, *supra* note 6, at 4, 8, 13, 18, 20–21.

218. See Neil Lunt et al., *MEDICAL TOURISM: TREATMENTS, MARKETS AND HEALTH SYSTEM IMPLICATIONS: A SCOPING REVIEW* 27–28, 42, available at <http://www.oecd.org/health/healthpoliciesanddata/48723982.pdf> (highlighting the need to implement some form of uniform assessment in order to improve the medical tourism industry); Glenn Cohen, *Protecting Patients with Passports: Medical Tourism and Patient-Protective Argument*, 95 *IOWA L. REV.* 1467, 1517–19 (2010).

219. See Burkett, *supra* note 3, at 233. See also Cohen, *supra* note 218, at 1489–90

they are used to protecting them in their health care experiences at home.<sup>220</sup> The United States has accumulated a system of regulatory processes and procedures to ensure high quality control.<sup>221</sup> For example, most pharmaceuticals and medical devices cannot hit the market until they meet the approval of the U.S. Food & Drug Administration.<sup>222</sup> To protect Americans, most medical tourist hotspots encourage the use of a broker or travel agent.<sup>223</sup>

No international governmental body is responsible for oversight of healthcare.<sup>224</sup> In addition, no U.S. agency monitors the medical treatment received by American tourists abroad.<sup>225</sup> However, organizations do exist that are dedicated to ensuring quality patient care around the world.<sup>226</sup> The leading organization is the Joint Commission International (JCI).<sup>227</sup> Established in 1994, JCI is the international arm of The Joint

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(discussing primary concerns in protecting American patients participating in medical tourism).

220. See Burkett, *supra* note 3, at 233.

221. See *id.* at 234.

222. See *FDA Basics: What Does FDA Do?*, U.S. FOOD & DRUG ADMIN., <http://www.fda.gov/AboutFDA/Transparency/Basics/ucm194877.htm> (last updated Dec. 17, 2010) (stating that one of the FDA's responsibilities is "protecting the public health by assuring that human and veterinary drugs, and vaccines and other biological products and medical devices intended for human use are safe and effective").

223. See Burkett, *supra* note 3, at 229.

224. *Id.* at 234.

225. See DELOITTE CTR. FOR HEALTH SOLUTIONS, *MEDICAL TOURISM: UPDATE AND IMPLICATIONS* 4 (2009), available at [http://www.deloitte.com/assets/Dcom-UnitedStates/Local%20Assets/Documents/us\\_chs\\_MedicalTourism\\_111209\\_web.pdf](http://www.deloitte.com/assets/Dcom-UnitedStates/Local%20Assets/Documents/us_chs_MedicalTourism_111209_web.pdf). See also Burkett, *supra* note 3, at 238; Jennifer Medina, *Mexicali Tour, From Tummy Tuck to Root Canal*, N.Y. TIMES (June 27, 2012), <http://www.nytimes.com/2012/06/28/health/mexicali-lures-american-tourists-with-medical-care.html?pagewanted=all&pagewanted=print> (stating that "[w]hile the facilities appear clean and modern, there are no published studies monitoring infection rates or other risk factors," with regard to medical tourism to Mexicali, Mexico).

226. See *Quality and Accreditation in Health Care Services: A Global Review*, WORLD HEALTH ORG. 3 (2003), available at [http://www.who.int/hrh/documents/en/quality\\_accreditation.pdf](http://www.who.int/hrh/documents/en/quality_accreditation.pdf).

227. See *About Joint Commission International*, JOINT COMMISSION INT'L, <http://www.jointcommissioninternational.org/About-JCI> (last visited Oct. 22, 2012) [hereinafter JCI].

Commission in the United States.<sup>228</sup> JCI's purpose is "improving the safety of patient care through the provision of accreditation and certification services as well as through advisory and educational services aimed at helping organizations implement practical and sustainable solutions."<sup>229</sup> The main service JCI provides for international patients is research and the accreditation of qualifying hospitals around the world.<sup>230</sup> JCI develops high standards and makes accrediting decisions with the input of a committee of "international health care experts."<sup>231</sup> JCI has been accrediting hospitals around the world since 1999, and it has accredited over 400 organizations in over thirty-nine countries.<sup>232</sup>

Nevertheless, an international agreement would provide a great benefit for American patients receiving international care. JCI cannot keep up with the number of hospitals requesting review and accreditation by JCI.<sup>233</sup> To provide a point of comparison, while JCI has accredited 400 organizations in the past twelve years, the Joint Commission accredits nearly 16,000 organizations in the United States alone.<sup>234</sup> JCI must focus its limited resources on the foreign hospitals with the longest waiting lists of international patients.<sup>235</sup> Many hospitals are unable to be reviewed by JCI, and therefore do not have a chance to receive JCI's seal of approval.<sup>236</sup> Therefore, because

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228. *Id.*

229. *Id.*

230. *Id.*; see also JOINT COMMISSION INT'L, JOINT COMMISSION INTERNATIONAL: ACCREDITATION AND CERTIFICATION, available at [http://www.jointcommissioninternational.org/common/pdfs/jcia/jcia\\_brochure-new\\_branding.pdf](http://www.jointcommissioninternational.org/common/pdfs/jcia/jcia_brochure-new_branding.pdf) (last visited Oct. 22, 2012).

231. See JCI, *supra* note 227.

232. See *id.*

233. See Burkett, *supra* note 3, at 230.

234. See *New to Accreditation*, JOINT COMMISSION INTERNATIONAL, <http://www.jointcommissioninternational.org/New-to-Accreditation/> (last visited Oct. 5, 2012) (highlighting JCI's certification of more than 400 healthcare organizations internationally). See also Karen H. Timmons, *Safety and Quality Standards: Driving Patient Expectations*, MED. TOURISM MAG., July-Aug. 2009, at 51, available at <http://www.medicaltourismmag.com/download/issue-11.pdf> (stating that the Joint Commission accredits nearly 16,000 healthcare facilities in the United States).

235. See Burkett, *supra* note 3, at 230.

236. See *id.*

many hospitals cannot claim JCI accreditation, American and other medical tourists are often left to depend on unreliable testimony from former patients to decide whether the hospital is safe.<sup>237</sup>

Under an international medical agreement, an international oversight committee could perform a function similar to that performed by JCI.<sup>238</sup> However, the oversight committee could receive more resources, assemble larger review teams, and establish international quality control standards. In addition, the oversight committee could enforce its standards by threatening nations with removal from the international medical agreement if quality control is poor.

*b. Jurisdictional Issues*

U.S. patients traveling abroad for care are often unaware of the legal hazards inherent in foreign medical travel.<sup>239</sup> If a patient is the victim of medical malpractice, they will find there are few effective legal avenues to seek compensation in many of the popular international locations that cater to American medical tourists.<sup>240</sup> American patients may seek a judicial remedy in the foreign country where they received treatment, but they likely will confront long civil litigation processes, undeveloped medical malpractice law, difficulty locating proper venue and defendants, language barriers, and standards of care that significantly benefit doctors.<sup>241</sup> In the United States, medical tourism companies, employers, and insurers can often limit their liability by making patients sign disclaimers before they travel abroad.<sup>242</sup>

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237. *See id.* at 229–30.

238. *See* JCI, *supra* note 227.

239. Cortez, *supra* note 2, at 4.

240. *See id.* at 5.

241. *Id.* at 5. *See also* Cohen, *supra* note 218, at 1489, 1494–502 (discussing problems American patients may encounter when attempting to establish personal jurisdiction over defendants, handling forum non conveniens issues, and addressing choice of law questions); *The Rise of Medical Tourism*, GRAIL RESEARCH, at 7 (Aug. 2009), [http://grailresearch.com/pdf/ContentPodsPdf/Rise\\_of\\_Medical\\_Tourism\\_Summary.pdf](http://grailresearch.com/pdf/ContentPodsPdf/Rise_of_Medical_Tourism_Summary.pdf) (describing barriers to growth in the medical tourism field).

242. Cortez, *supra* note 2, at 18.

An international medical agreement could help mitigate these legal obstacles. Signatory nations could agree to guidelines that would clarify each nation's existing laws and provide an effective legal path for aggrieved international patients. One potential remedy would be to confine all lawsuits to a venue in the patient's country of origin by imposing strict liability on the medical tourism company, employer, or insurer that organized the patient's travel.<sup>243</sup> Similarly, a second potential remedy would impose vicarious liability on the home medical tourism companies, employers, or insurers that organize travel by prohibiting informed consent waivers that many of those companies use to limit their liability.<sup>244</sup> A final potential remedy would require or encourage all employers, insurers, or other intermediaries to purchase insurance for their patient travelers.<sup>245</sup>

Although each of these solutions comes with its own advantages and drawbacks, an international medical agreement could benefit medical travelers by clarifying existing law and ensuring patients have a proper legal venue to hear their malpractice claims.

## V. CONCLUSION

Inbound medical tourism presents an opportunity to pump additional revenue into American healthcare from a largely untapped international patient population.<sup>246</sup> American providers have started doing their part to market to international markets and affiliate with foreign providers.<sup>247</sup> However, U.S. hospitals will eventually reach a revenue ceiling that results from immigration regulations that do not account

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243. *See id.* at 84.

244. *Id.* at 86. In the United States, the Food and Drug Administration (FDA) takes a similar approach to protecting patients. FDA regulations, in the context of clinical research trials, provide that "no informed consent [documents], whether oral or written, may include any exculpatory language through which the subject or the representative is made to waive or appear to waive any of the subject's legal rights." *Id.*; *see also* 21 C.F.R. § 50.20 (2012).

245. *See Cortez, supra* note 2, at 85.

246. *See discussion supra* Part II.C.

247. *See discussion supra* Part II.B.

for the modern, global medical marketplace.<sup>248</sup> Until the United States reforms its own visa regulations, or agrees to join other nations in signing an international medical agreement, inbound medical tourism will remain an untapped opportunity to stabilize the American healthcare system.

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248. See Med. Tourism Assoc., *US Hospitals to Discuss Inbound and Domestic Medical Tourism at Los Angeles Conference in September*, MARKETWIRE (July 29, 2010, 11:08 AM), <http://www.marketwire.com/press-release/US-Hospitals-Discuss-Inbound-Domestic-Medical-Tourism-Los-Angeles-Conference-September-1297532.htm> (discussing hospitals' ongoing attempts to increase revenue through inbound medical tourism). Cf. Alex Piper, *Compare and Contrast Inbound vs. Outbound Healthcare*, MED. TOURISM MAG., July-Aug. 2009, at 16, available at <http://www.medicaltourismmag.com/download/issue-11.pdf> ("The main commercial feature of that report is that inbound medical tourism is expected to be essentially stagnant into the foreseeable future.").