



HEALTHCARE YEAR IN REVIEW:

# FOCUS ON EUROPE

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From the rise of digital health opportunities to concerns stemming from political shifts, McDermott partners review major European health trends in 2019 and look forward to what we might expect to see from 2020 onwards.

This commentary comes with the understanding that European health systems vary from country to country and cannot be considered a single industry. However, we have nonetheless sought to identify 10 key developments that have been taking shape within European jurisdictions recently.

## 1. EUROPEAN HEALTHCARE SPREADS

Emerging markets, particularly in the Middle East and Asia Pacific, have increasingly sought help from Europe and the US in the development of their own health systems.

In jurisdictions as diverse as China, Singapore, Malaysia, India, North Africa and others, European health providers have entered into collaborative arrangements, which have typically taken the form of acquisitions, investments, joint ventures and advisory assignments. This is similar to what some US health systems have already done. We expect this will gather pace going forward with the development of outbound international offerings.

## 2. INTEGRATED CARE SERVICES MODELS

Non-European operators and investors, particularly from the US, have been seeking collaborative transactions through integrated care models being established in Europe. In the integrated care model, services are commonly provided on a defined population budget, with a provider responsible for managing care, on a holistic basis, for that population rather than on a pure fee-per-service basis. The model proposes to incentivize providers across a system to ensure that care is provided in a value setting and to proactively manage demand and patient flow.

While it is a sensible approach that could see further development, in the near future, it may be hampered by the difficulties of establishing population health budgets and, in some countries, a political environment in which private sector involvement is treated with skepticism—and sometimes suspicion—as to the benefits it provides.

## 3. DIGITAL HEALTH

The investment community is looking at technological advancements generally, and digital health in particular, for new opportunities.

As collaborations between entities in diverse geographic locations proliferate (e.g., an academic medical center in Europe collaborating with a partner in China), digital and telehealth offerings and related capabilities will grow. In addition, some European countries may become particularly attractive for this type of collaboration with the adoption of provisions allowing the deployment and reimbursement of telemedicine and digital services.

These opportunities come with challenges, particularly dual regulatory compliance and the use and sharing of data, which is subject to General Data Protection Regulation (GDPR) in Europe.

As for artificial intelligence (AI), the legal framework for approving AI-powered devices is not yet settled. Generally, the period for medical device regulatory review by notified bodies has increased in Europe due to new medical device regulation expected in May 2020 for medical devices and in 2021 for diagnostics.

We anticipate that this will be an area of increasing investment, growth and rapid change.

#### 4. BUYERS FAVOR CHAIN TRANSACTIONS

In further deal activity within the health sector, focusing on private equity in particular, we have seen the development of chain transactions.

For example, instead of purchasing one pharmacy business, a buyer will seek to purchase a series of pharmacies over time and use the economies of scale to create and maintain profitability. Similar transactions are also on the rise in dental care, nursing care, ophthalmology, care homes and other areas. This trend is likely to lead to an increase in cross-border activity and consolidation as investors establish a chain in one country and then move on to make similar acquisitions in another country.

In certain European countries, the restrictions on ownership in certain sectors, including primary care, pharmacies, medical laboratories and outpatient platforms, have led to specific investment structures.

#### 5. INVESTORS CROSS BORDERS

More frequently within Europe, in addition to European investors, international investors from the US, China, India, South Africa and Australia, among others, are coming into the European market.

Although the growth of a pan-European industry is complex, as countries in Europe operate different health models and reimbursement systems, we have seen a trend for more cross border activity in certain areas—such as clinics, nursing homes, medical laboratories and dentistry—and we anticipate this trend will continue over the coming years.

#### 6. POTENTIAL FOR HEALTHCARE REFORM

Over the past several years, populist movements have, to a smaller or larger extent, gained traction in many European countries.

These movements can have a significant impact on society, as on various industry sectors. Healthcare, however, is unlikely to be materially affected. Although healthcare reform might often be the subject of political discussion, implementing related reforms often proves difficult. Regardless of ideology, governments will likely seek to argue and demonstrate that their proposals safeguard and improve quality care, efficiencies and the availability of service provision.

Ultimately, any proposed reform will need to take into account wider demand drivers for healthcare—ageing populations, cost of provision and quality. Therefore, governments and public payers will continue to allocate adequate funding to functioning healthcare structures and will refrain from introducing risky

healthcare reforms that might trigger public unrest. In most European countries, this means that healthcare remains a consistent and possibly recession-proof investment.

## 7. PRIVATE SECTOR MEETS PUBLIC HEALTH

Around the world, corporations—in particular, private equity firms—have been investigating opportunities for involvement in health systems, health providers and businesses servicing the health and life sciences sector.

For instance, in the UK, political parties have been debating the role of the private sector in health services delivery, and proposals are afoot to change the legal regime for national health services procurement. In other European countries, there is significant debate about the role of private equity and short-term hold periods in health services delivery. This is particularly the case in the German outpatient sector, where private providers dominate the market.

In many cases, there is a significant requirement for investment in innovation, technology and infrastructure, and despite political debate, the private sector already provides significant proportions of health services in some sub-sectors (for example, mental health, primary care and dental services in the UK) and in markets such as Germany and France—where the role of the private sector is set to further expand.

In addition, we predict a continuing and growing role for the private sector to get involved in outsourcing arrangements, such as equipment provision, technology and consumables and certain elements of specialized care delivery. Pharma and life sciences outsourced services continue to be a field of increasing investment and remain hot areas for private equity investors.

## 8. SHORTAGE OF QUALIFIED RESOURCES RAISES COST IMPLICATIONS

Politics could factor into other areas of healthcare as well.

Across Europe, many clinical professionals (doctors, nurses, allied health professionals and care workers) have historically crossed borders from other countries to work. The ease of movement and mutual recognition of qualifications between countries has created a supply of personnel that has helped bolster resources and kept healthcare delivery costs down.

In particular, the UK has relied heavily on foreign health professionals for many years: by current estimates, 13% of health staff are not from the UK. The impact of Brexit on health staffing is yet to be determined in the terms of a trade deal, but under current UK immigration proposals, which will apply from 2021, NHS staff will be favorably treated as a “shortage” profession. However, the position of workers in other care settings is not proposed to be protected in the same way.

In other European countries, the shortage of trained healthcare professionals to face the needs of an ageing population is also an issue, especially in some remote areas—the so-called “medical deserts.” This fosters the development of innovative solutions, including in telemedicine. It also raises wider questions about the continued need for investment in healthcare education and training and the need to better use allied health professionals, pharmacists and other care professionals across a health system.

## 9. DEMAND FOR VALUE DRIVES INNOVATION

Questions are also being asked around the pricing of drugs and pharmaceuticals purchased by, for example, the NHS in the UK, where prices are typically lower than in the US due to statutory price protection schemes.

A key element of UK trade negotiations with the US may include the request for removal of these price caps, although a key manifesto pledge of the UK government was that the “prices the NHS pays for drugs will not be on the table.”

A number of European countries have sought to apply value-based pricing schemes, where payment will depend on “real life evidence.” This leads the pharmaceutical firms to develop innovative solutions to obtain such real life data to verify efficacy and improve compliance with drug-taking and treatment.

To maintain value as the costs of drugs, pharmaceuticals and equipment increase, innovation will play a role. As an example from a legal perspective, our Firm has worked on public/private partnerships, particularly in respect of technology alongside pharma services and for managed equipment services (i.e., when a hospital needs an expensive item it cannot afford). In that case, a financier helps buy the item, and with a partner—usually the manufacturer or original vendor—provides use of that piece of equipment to the hospital, which pays for usage and quality of usage.

## 10. NON-HEALTH PROVIDERS CREATE NEW POSSIBILITIES

In the US, non-health providers such as major technology companies and others have entered the healthcare market, and in some cases, created innovative vertical and horizontal collaborations with diverse organizations. They have acted as industry disrupters/game changers, a model that could extend globally.

In Europe, the potential also exists—especially in the pharmaceuticals and drugs supplier market, digital, equipment and business process arenas.

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