Immigration Pathways for Recruitment

Maine Rural Health and Primary Care Program

Matthew Webster October 17, 2023



Agenda

Immigration as a Recruitment & Retention Tool

Overview of IMG Physician J-1 Waiver Programs

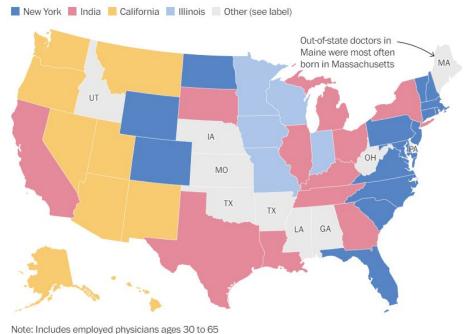
IMG Physician Retention & Permanent Residence

Nurses and Allied Healthcare Staff

Dentists – Immigration, Recruitment & Retention

Including India reshapes the doctor-origin map

Most common birthplace for out-of-state physicians, 2012-2021



DEPARTMENT OF DATA / THE WASHINGTON POST

Van Dam, Andrew. "The states that produce the most doctors, artists and writers, and more," The Washington Post (Aug. 18, 2023), *available at:*

https://www.washingtonpost.com/business/2023/08/18/states-most-artists-writers/

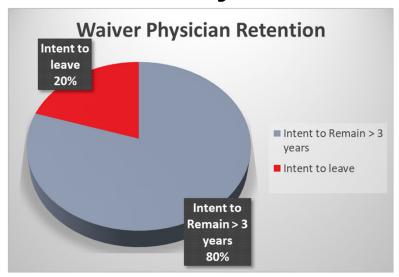
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Source: Census Bureau's American Community Survey

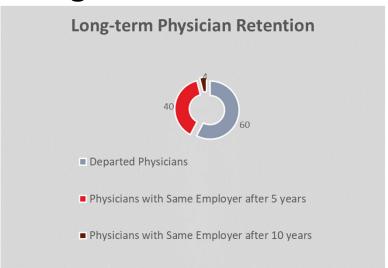


- Expand Pool of Physicians (1/4 IMGs)
- Incentives for Rural & Medically Underserved Placements (1000+/year)
 - HHS processed 350 Clinical Waivers in FY2022, 450 in FY2023, and more than 600 in FY2024
- Elevated Professional Practice
- DEI & Culture Considerations
- Keystone to Competitive Recruitment

Retention >3 years



Long-term Retention



https://www.ruralhealthinfo.org/topics/j-1-visa-waiver



Questions/Concerns

- <u>Unfamiliarity</u> with process/requirements
- Complexity/uncertainty
- <u>Timing</u> (esp. recruiting)
- Expense
- Short-term/Long-Term Retention
- Community Receptivity
- Spousal Concern/Isolation

Benefits

- Legal counsel can assist with process/requirements, providing <u>competitive</u> <u>advantage</u> vis-à-vis other states/institutions
- Timing is earlier which enables "<u>first round</u>" <u>draft picks</u>
- Legal \$ < Ongoing Vacancy & Recruitment \$
- Retention prospects better for J-1 waiver physicians (<u>term contract</u>)
- Better clinical outcomes/wait times drives community receptivity
- Spousal support can drive retention/satisfaction

 BOTTOM LINE: The J-1 Waiver is likely the #1 priority of an IMG physician looking to match, and family immigration and permanent residence are likely #2.



Overview of IMG Physician J-1 Waiver Programs

Exchange Visitor Program: A Brief Primer



DEFINITION: J-1 EXCHANGE VISITOR



WHY PHYSICIANS?



ECFMG & DEPARTMENT OF STATE



TIME & ACTIVITY LIMITATIONS

Physicians – 2-Year Home Residence Obligation

- Blanket coverage to ALL J-1 clinical trainees
- Requires residence and physical presence in HOME COUNTRY
- Implications:
 - Ineligibility for an H-1B visa
 - Ineligibility for permanent residence
- Conversely: does not disqualify eligibility for other nonimmigrant visas (O-1, TN, etc.)

Physicians - Options for J-1 Physician on Completing GME?

- #1 Return home for two years
- #2 Obtain a waiver of two-year home residence obligation
- #3 Qualify for alternative visa status other than H-1B

Physicians - Bases for J-1 Waivers

- Exceptional hardship to USC relative
- Persecution
- Interested Government Agency (IGA) sponsorship
 - Conrad State 30 Program/State Department of Health
 - Delta Regional Authority/Appalachian Regional Commission
 - Department of Health and Human Services

Release/no-objection statement from home country unavailable for IMG physicians





What are the Federal Requirements for IGA Waivers?

Conrad Program Only - Limit of 30 waivers/fiscal year

- Medically underserved placements: up to 30
- FLEX waivers: 10

Full-time employment/ 40 hours clinical care in HPSA/MUA/MUP worksite

Need to agree to work in position within 90 days of waiver issuance

3-year H-1B employment obligation

Conrad State 30 Waiver Program: What Is It?

- Allows state DOH to recommend up to 30 physicians/ year who will serve the public interest
- Public policy focus: expanding the safety net
- Federal-State partnership
 - Federal: creates basic structure
 - State:
 - Fill in the blanks
 - Administer the program to meet needs of State
 - NOTE: Unless codified or subject to state regulations, State DOH has wide latitude to craft Conrad 30 program to meet patient needs & maximize waiver usage

Maine - State Conrad Waiver Requirements

- FIFO
- 6 months of recruitment
- Semi-annual reporting requirements
- Notifications of material changes within 10 days

https://www.maine.gov/dhhs/mecdc/public-health-systems/rhpc/j1-visa-waiver-program.shtml

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- Only 24/50 states filled all 30 Conrad slots.
- Only 19% of Conrad 30 waiver slots were filled by Primary Care Physicians
- 77% of Conrad 30 slots were for Specialists
- 70% of Conrad 30 slots were for nonrural placements

		FF	Y 2022	10/21	to 9/22			
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Filled all slots		88 8				60 10		24

https://www.3rnet.org/j1-filled

- Overall Conrad
 30 usage peaked
 in FY20 at 1,182
 but has remained
 above 1,000
 waivers since
 FY18
- Since FY18, about half of states have filled all 30 slots

https://www.3rnet.org/j1-filled

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- While some states have historically always filled, newer additions are:
 - Arizona
 - Arkansas
 - Louisiana
 - Oklahoma
- States which used to fill but have not recently are:
 - California
 - Kansas
 - North
 Carolina
 - Washington

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Department of Health and Human Services Waivers

- Primary Care Only
 - Family practice, general pediatrics, obstetrics/gynecology, general internal medicine, or general psychiatry; and
 - Board certified or board eligible in primary care discipline in the last
 12 months
- Previously FQHC; Now <u>HPSA Score of 7 or Higher</u>
 - -NEW REQUIREMENT: HPSA worksites "proposed for withdrawal" do not qualify independently
- Endorsement from State Department of Health
- Sliding Fee Scale



Once Waiver Recommended by Agency

- Requires subsequent clearance by DOS and USCIS
- Timelines vary (generally 18-20+ weeks for waiver approval)
- Can file H-1B petition on DOS recommendation (preferable: USCIS I-612 receipt notice)
- 3-year H-1B employment obligation

H-1B Process

- Nonimmigrant Visa Status
- 6-Year Limit
- Mandatory 3-Year H-1B Obligation
- Two-Step Process
 - Labor Condition Application
 - H-1B Petition

Physicians – Options Instead of Clinical Waiver

Option for HHS Research Waiver

Canadian H-1B entry exception

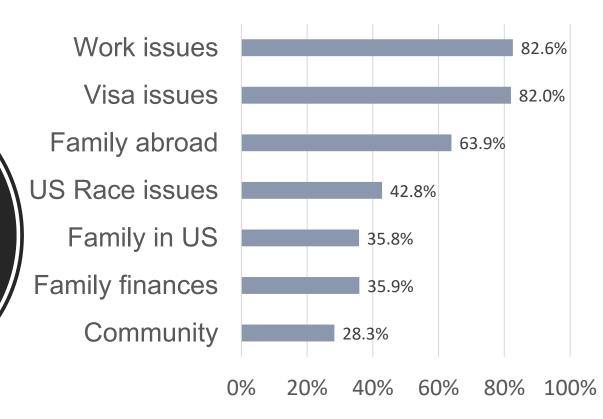
Other nonimmigrant visa options (O-1, F-1, TN, E-2)

Extend J-1, if possible

Spousal Option

Asylum/TPS





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IMG Physician Retention & Permanent Residence

Basic Strategy Options for Permanent Residence

Family-Based

Fear of Persecution

Employment-Based

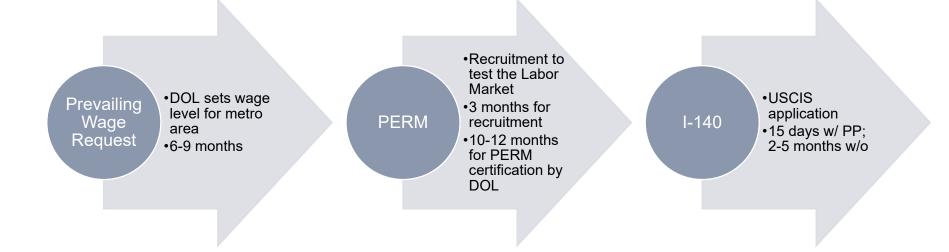
Miscellaneous

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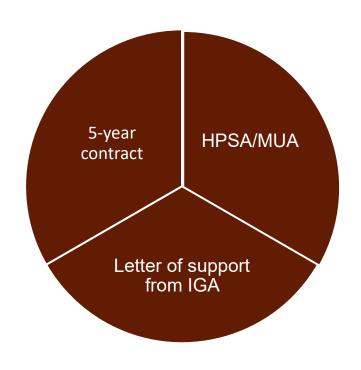
Permanent Resident Options

- 1. PERM Labor Certification
- 2. Physician National Interest Waiver (PNIW)

PERM Process



Physician National Interest Waiver



- Permits early green card application (EAD/AP card)
- H-4 EAD Option
- Earlier priority date (essential for Indian and Chinese physicians)

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Dentists:

Immigration, Recruitment, & Retention

How does Dentist Immigration differ from Physician Immigration

No J-1 visa issues

No 2-year home residence obligation

No National Interest Waiver option

Greater concern with H-1B quota

Dentists not "essential workers"

Lifecycle of International Dentist

F-1 student/graduate student (difference between visa and training from IMG situation)

F-1 OPT (not STEM eligible) – F-1 CPT

H-1B: Cap or Cap-exempt Alternatives to H-1B: TN/NIV/EAD derived from spouse

LPR (PERM)

Timing considerations

Visa options for nondentist professionals

H-1B Temporary Worker Provisions

Big Issue: Cap-Subject vs. Cap-Exempt

When to start H-1B Sponsorship Process

Requires authorization for position

Prevailing Wage

Timeline for H-1B case



Role of Accrediting Agencies

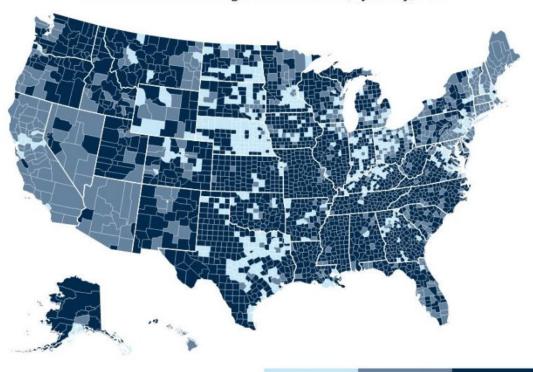
Almost all states in the US require dentists educated in the US to possess a DDS (Doctor of Dental Surgery) or DMD (Doctor of Dental Medicine).

Degree must be from a university-based dental education program accredited by the American Dental Association Commission on Dental Accreditation (ADA CODA).

If degree from a country other than the US or Canada, need an evaluation from a credentialing agency that certifies that degree equivalent to American dentistry degree.



Health Professional Shortage Areas: Dental Care, by County, 2021



None of county is shortage area

Part of county is shortage area Whole county is shortage area

Source: data.HRSA.gov, April 2021.

Nurses and Allied Healthcare Staff:

Immigration, Recruitment, & Retention

Immigration for Nurses

Issues

- Current State of Nurse Workforce
- Expanding role of nurses to address healthcare shortages

Solutions

- **Immigration Options**
- Nurse Staffing Agencies

H-1B "Specialty Occupation" Status for Nurses

- Certain Nursing Positions are eligible for H-1B
 - Advanced Practice Registered Nurse/APRN (Masters)
 - NP (Masters)
 - RN (Assoc./Bachelors)
 - ADN (Associate degree)
 - LPN (1 year)
 - CNA

H-1B Restrictions:

- Specialty Occupation = Bachelor's degree
- Consequence:
 - Most RNs are ineligible for H-1B Status
- Exceptions:
 - Normal to industry (APRN/NP)
 - Special needs of employer



H-1B Submission for Nurse

Identification of "specialty occupation"

State licensure

VisaScreen



Alternative Visa Status

- TN (Canada/Mexico only)
- F-1 OPT
- NOTE: VisaScreen is a mandatory, blanket requirement (even if U.S. nursing school graduate)

"VisaScreen": Section 343 Healthcare Worker Certificate

- Nurses (RN, LPN/LVN)
- Physical Therapists
- Occupational Therapists
- Medical Technologists
- Medical Technicians

- Audiologist
- Physician Assistants
- Speech-Language Pathologists



Schedule A



"Schedule A" – list of fields with DOL-identified shortage

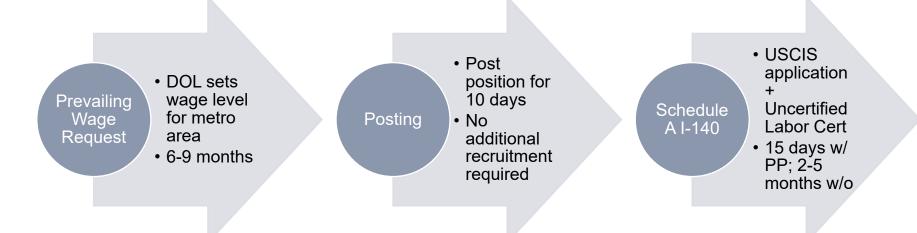


- No PERM recruitment required
- DOL has pre-certified that these positions are in short supply



- Physical Therapists: Must possess all qualifications required by state
- Professional Nurses: Full state nursing license OR CGFNS certificate OR passed NCLEX-RN

Permanent Resident Process for Nurses



Nurses – Permanent Residence Strategies

Employment- based	All Chargeability Areas Except Those Listed	CHINA- mainland born	INDIA	MEXICO	PHILIPPINES
1st	С	01AUG22	01JUL19	С	С
2nd	01JAN23	01JAN20	15MAY12	01JAN23	01JAN23
3rd	01FEB23	01SEP20	01AUG12	01FEB23	01JAN23
Other Workers	15DEC20	01JUN17	01AUG12	15DEC20	15MAY20
4th	01MAR19	01MAR19	01MAR19	01MAR19	01MAR19
Certain Religious Workers	01MAR19	01MAR19	01MAR19	01MAR19	01MAR19

- EB-3 vs. EB-2
- Backlogs
- Cross-chargeability



Allied Health Professionals - Considerations

- VisaScreen vs. non-VisaScreen professions
- Licensure provisions
- H-1B option
- TN occupational categories
- Immigrant Visa options



Allied Health Professionals – H-1B

- Cap subject or cap exempt?
 - Exempt = nonprofit affiliated with institution of higher education
 - If subject = register in annual lottery
- Bachelor's degree in a specific field required
 - Normal across industry
 - Employer normally requires
 - Due to specialized nature of specific role
- Candidate possesses the required degree
- Must pay the prevailing wage
- Six year maximum
 - Timing to begin immigrant visa LPR sponsorship policy?



Allied Health Professionals – TN (Canada/Mexico)

Medical Professionals

Dentist

Dietitian

Medical Lab/Technologist

Nutritionist

Occupational Therapist

Pharmacist

Physician (teaching/research)

Physiotherapist/Physical Therapist

Psychologist

Rec. Therapist

RN

Support Professionals

Accountant

Management Analyst

Computer Systems Analyst

Biochemist

Biologist

Chemist

Epidemiologist

Geneticist

Pharmacologist

Research Assistant



Allied Health Professionals – Immigrant Visa Options

- PERM (EB-2 or 3)
- National Interest Waiver (EB-2)
- Outstanding Researcher or Professor (EB-1)

Keys to Success

- Early & Open communication
- When to call immigration counsel:
 - Case initiation
 - Government audit
 - Changes in work duties, location, or pay
 - Changes in organizational structure
 - Strike, lockout, furlough, or layoffs
- Identify Organizational Immigration Policy
- Begin Immigration Process in Advance





Contact Information



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Thank you!

