## Making the Immigration Match for International Physicians:

What Every International Medical Graduate Resident and Fellow Needs to Know about Immigration Pathways in the U.S.

**Immigration Webinar** 

August 22, 2024



#### **Agenda**

# Overview of IMG Physician J-1 Waiver Programs & Options

IMG Physician Permanent Residence

**Key Considerations & Questions** 



#### **Complications of IMG Job Search**

## In addition to finding an ideal practice area, IMG residents/fellows also need to consider the following:

- 1. <u>Timing</u> Many immigration processes are time-intensive and time-sensitive
- Employer Type Employer type and location may impact immigration options
- 3. <u>Employer Sponsorship</u> Employer support for **nonimmigrant & immigrant**
- Spouse/Family Options and employer support for spousal employment and family immigration options





# Overview of IMG Physician J-1 Waiver Programs



#### J-1 Exchange Visitor Program: A Brief Primer



DEFINITION: J-1 EXCHANGE VISITOR



WHY PHYSICIANS?



ECFMG & DEPARTMENT OF STATE



TIME & ACTIVITY LIMITATIONS



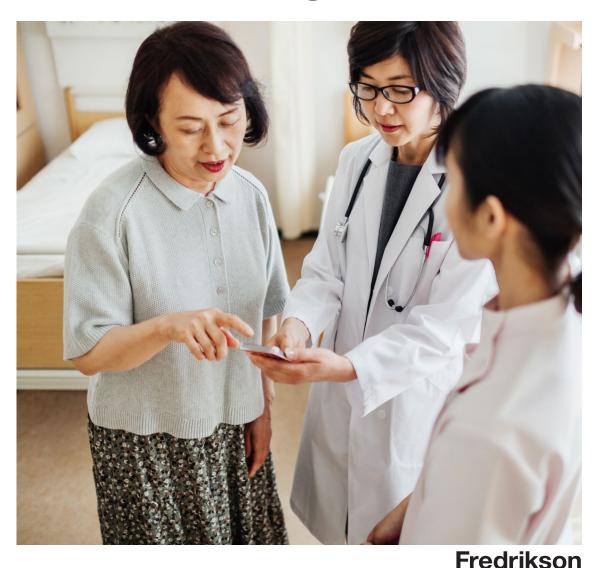
#### 2-Year Home Residence Obligation

- 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.)



## **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



#### **Bases for Physician J-1 Waivers**

- Interested Government Agency (IGA) sponsorship
  - Conrad State 30 Program/State Department of Health
  - Regional Commissions (DRA, ARC, SCRC, NBRC)
  - Department of Health and Human Services (HHS)
- Exceptional hardship to USC relative
- Persecution

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

\*\*Can only receive ONE waiver - first waiver approved controls\*\*



#### 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



#### State Conrad Waiver Nuances that Matter

- Special Application Periods ("First in, First out," 60-day filing period, phased filings, etc.)
- Primary Care vs. Specialty Care
- Primary Care: Definition & Scope
- Historical Usage Numbers & Competitiveness
- Limitations on Underserved Designations
- FLEX Policy & Competitiveness
- Non-Compete & Other Contract Language Requirements
- Departure Policies & Reporting Requirements
- Limitation on # of waivers per employer
- Additional forms/affidavits?
- Timing of program application/consideration/decision periods



#### **Historical Waiver Usage (FY22)**

- In FY22, **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 non-rural placements

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Nevada	2	0	13	0	15		1	15
New Hampshire	16	1	11	13	15	6 1	10	28
New Jersey	6	0	5	0	11	3	2	11
New Mexico	6	2	22	20	10		10	30
New York	1	1	28	2	28	3 9	0	30
North Carolina	2	1	15	6	12	0 0	8	18
North Dakota	1	. 1	8	0	10		10	10
Ohio	2	. 0	27	2	27	8 8	10	29
Oklahoma	0	1	29	9	21	37 3	10	30
Oregon	13	1	16	8	22		3	30
Pennsylvania	2	2	26	7	22	1	4	30
Puerto Rico	0	0	0	0	0		0	0
Rhode Island	6	1	23	0	30	3 3	10	30
South Carolina	1	0	23	3.	21		7	24
South Dakota	3	0	9	0	12		9	12
Tennessee	1	0	29	13	17		2	30
Texas	6	2	22	1	26	3	0	
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https://www.3rnet.org/j1-filled



#### <u>Historical</u> <u>Waiver Usage</u> (2001-2022)

- 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

	Conrad 30 State Totals from FY 2001 through FY 2022																					
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State	FY 01 Total	FY 02 Total	FY 03 Total	GAO Total	GAO Total	FY 06 Total	FY 07 Total	FY 08 Total	FY 09 Total	FY 10 Total	FY 11 Total	FY 12 Total	FY 13 Total	FY 14 Total	FY 15 Total	FY 16 Total	FY 17 Total	FY 18 Total	FY 19 Total	FY 20 Total	FY 21 Total	FY 22 Total
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Arizona	19	30	30	30	30	30	30	30	30	18	25	30	30	-	-	24	25	29	27	30	30	3
Arkansas	0	-	30	30	29		No Data		No Data	No Data	14					30		17	27	29	30	
California	0		30	30	30		30		30	30	30	30		30		30	30	No Data	30	30	23	
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Idaho	0	0	0	0	1	1	0		1	0	5	0		2		0			4	11	1	
Illinois	20	22	28	30	30		30		30	30	30	30	29	-		30	30	30	30	30	30	
Indiana	18	28	27	30	30		14	18	29	30	30	30	30	_	_	30	30	30	30	30	30	
Iowa	20	30	30	30	28		30		29	25	30	30				30	30	30	30	30	30	
Kansas	0	4	14	26	17		14		13		22	23				30	25	30	30	30	29	1
Kentucky	20	30	30	30	30	30	30	30	30	30	30	30		30	30	30	30	30	30	30	30	3
Louisiana	0	15	15	13	10	15	22	22	15	25	19	18	20	12	17	12	6	12	12	15	22	3
Maine	12	20	29	18	25	18	25	23	9	25	27	22	30	27	30	30	30	30	30	30	30	No Data
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New York	20	30	30	30	30		30		30	30	30	30	30			30	30	30	30	30	30	3
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Oregon	0	4	20	19	22	14	19	26	24	14	27	18	29	29	26	30	30	30	30	30	26	3
Pennsylvania	9	10	13	16	22	26	27	30	29	30	23	30	30	30	16	28	30	30	30	30	30	3
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South Carolina	19	20	30	26	21	20	13	23	19	16	25	21	17	30	-	21	22	28	24	28	30	2
South Dakota	0	12	10	6	6		10	_	6	7	6	12	11	_	8	10	11	13	14	13	11	1
Tennessee	20	30	21	27	12	-	6		10	7	13	11	11	6	12	12	13	17	18	22	27	3
Texas	0	11	30	30	30		30		30	30	30	30	30		_	30	30	30	30	30	30	3
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Virginia	8	6		13	19		14		13	20	24			_			30		30	_	30	
Washington	20	19	30	30	28				30		26			_	_				30	30	30	2
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- While some states have historically always filled, newer additions are:
  - Arizona
  - Arkansas
  - Louisiana
  - Oklahoma
- States which once filled but have not recently are:
  - California
  - Kansas
  - North Carolina
  - Washington



#### **Conrad State 30 Waiver Programs: Key Points**

#### Plan Early!

- October 1 is the start of federal Fiscal Year and the opening date for most state Conrad 30 programs
- Some states (MN, NM, GA, etc.) permit early filing but don't make decisions until after 10/1
- Ideally you would match summer before end of residency/fellowship

## Timing for state notifications

• Depending on the timing of the state notifications, you may have time to file another waiver if not selected in that state's Conrad 30 program

## Likelihood of success?

 Understand the competitivity of that state's Conrad 30 program & whether any other unlimited waiver programs are available



#### Department of Health & Human Services Clinical Waiver

#### **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 HPSA Score of 7 or Higher

Endorsement from State Department of Health

Sliding Fee Scale



#### Delta Regional Authority (DRA) Waiver Program



LIMITED TO HPSA / MUA/MHPSA/MUP WITHIN DRA REGION



**NO QUOTA** 



45-DAY MANDATORY
RECRUITMENT WITHIN
12 MONTHS OF SUBMISSION



SPECIALTY & PRIMARY CARE PHYSICIANS



https://dra.gov/



## Appalachian Regional Commission (ARC) Waiver Program



LIMITED TO HPSA / MUA WITHIN ARC REGION



**NO QUOTA** 



6-MONTH MANDATORY RECRUITMENT



PRIMARY CARE, PSYCHIATRISTS, AND SUB-SPECIALTY PHYSICIANS



https://arc.gov/



#### Southeast Crescent Regional Commission (SCRC) Waiver **Program**



LIMITED TO HPSA / **MUA WITHIN SCRC** REGION



**NO QUOTA** 



**45-DAY MANDATORY** RECRUITMENT



**Distressed Counties Transitional Counties Attainment Counties** 

**Economic Status** Designations

\$3000 APPLICATION FEE; \$3000 EXPEDITE FEE (45 DAYS)



PRIMARY CARE. PSYCHIATRISTS, AND SUB-SPECIALTY **PHYSICIANS** 

https://scrc.gov/sites/default/files/2024-07/fy24 scrc regional map.pdf **Fredrikson** 

#### Northern Border Regional Commission (NBRC) Waiver Program



LIMITED TO HPSA / MUA WITHIN REGION (ME, NH, NY, VT)



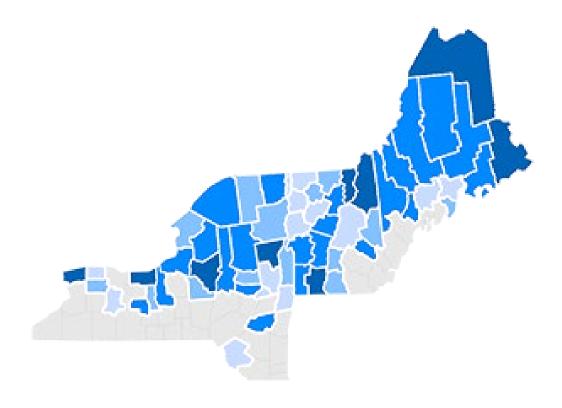
**NO QUOTA** 



6-MONTH MANDATORY RECRUITMENT



PRIMARY CARE, PSYCHIATRISTS, AND SUB-SPECIALTY PHYSICIANS



https://www.nbrc.gov/



#### 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 (preferably at least USCIS I-612 Receipt Notice)
- 3-year H-1B employment obligation

Interested Government Agency (IGA)

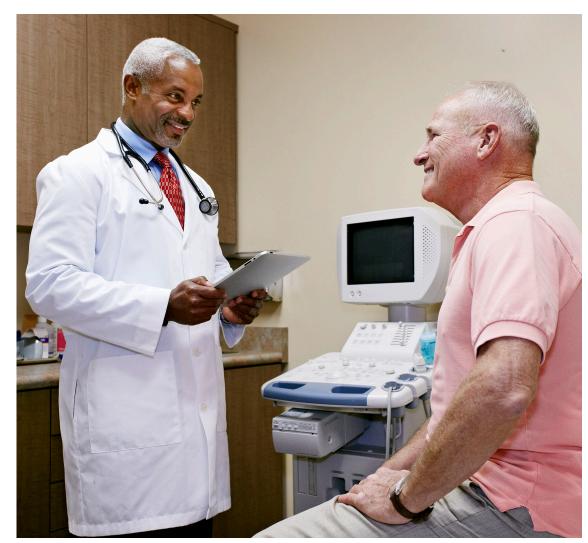
Department of State (DOS)

United States Citizenship & Immigration Services (USCIS)



#### H-1B Process

- Nonimmigrant Visa Status
- 6-Year Maximum\*
- Mandatory 3-Year H-1B Obligation
  - Except in extenuating circumstances
- Two-Step Process
  - Labor Condition Application with DOL
  - H-1B Petition with USCIS



#### **Family Considerations**

- J-2 two-year home residency requirements
  - J-1 waiver covers J-2 dependents
    - Exception for death, divorce, child over 21
  - If fulfilling home residency requirement, each individual must complete physical presence in home country
  - Individual present in both J-1 and J-2 status requires two waivers
- Spouse Employment Authorization
  - Dependent EAD
  - Independent work authorized status



## Department of Health & Human Services Research Waiver

For individuals with highly engaged research scholarship within their field of interest or high priority to the agency

Program and activity engaged in should serve the national or international interest

Peer reviewed by NIH

Requires research component to position and at an institution engaged in research

Can take 2+ years for review



#### **Exceptional Hardship Waiver**

- Hardship must be to US citizen or lawful permanent resident spouse or child
- Evaluate hardship if relocate or separate
- Must beyond normal hardship expected from temporary relocation or separation
- Consider country conditions, medical conditions, financial circumstances
- Process:
  - Filed with USCIS.
  - If recommended DOS must recommend.
  - USCIS issues final approval.
- Timing & Travel considerations: 18-24 months for adjudication



#### **Persecution Waiver**



Demonstrate persecution based on race, religion, or political opinion



Persecutor must be government or group government is unwilling or unable to control



Standard: "Would be subject" - higher standard than asylum



Process:

Filed with USCIS
If recommended DOS must recommend

USCIS issues final approval





Timing & Travel considerations: 18-24 months for adjudication



#### **Waiver Alternatives**

#### Alternative Options to work without securing a waiver:

- Canadian citizens and H1B visas
- O1 Extraordinary Ability
  - 3 of 10 regulatory requirements showing extraordinary ability in the field of endeavor (research focus)
  - Totality how in sum your accomplishments establish working in the top of the field
  - Must secure the visa abroad

TN (no clinical work)

E2

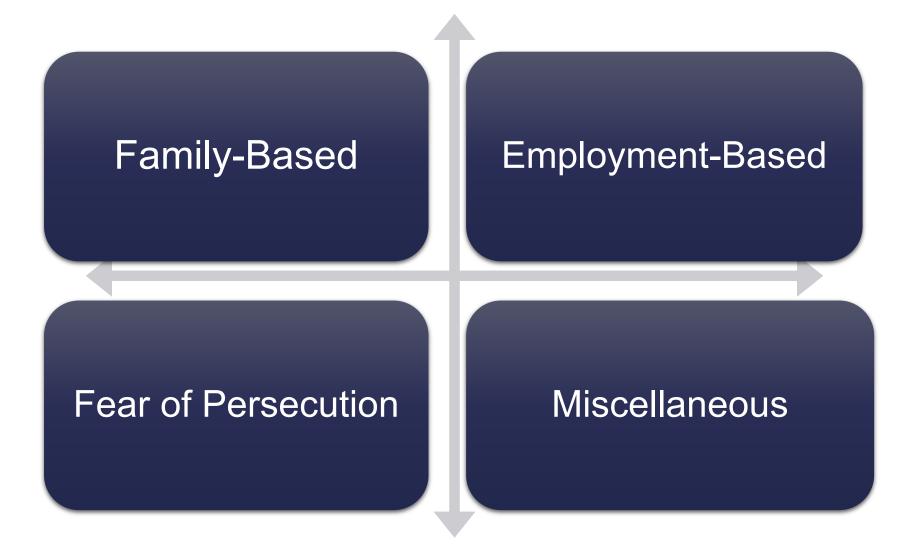
TPS/Asylum



## IMG Physician Permanent Residence



#### **Basic Strategy Options for Permanent Residence**





#### **Permanent Resident Options**



1. PERM Labor Certification



2. Physician National Interest Waiver (PNIW)



3. EB-2 NIW



4. EB-1



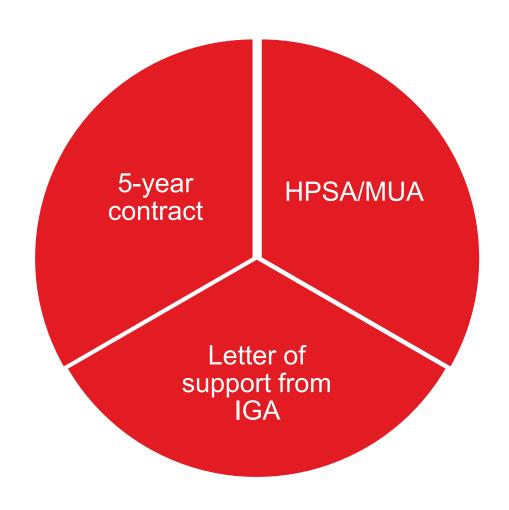
#### **PERM Labor Certification Process**



- Tied to sponsoring employer
- Success dependent on test of labor market



## Physician National Interest Waiver (PNIW)



- Permits early green card application (EAD/AP card)
- H-4 Spouse EAD Option
- Earliest priority date (essential for Indian and Chinese physicians)
- Portable between employers



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#### **National Interest Waiver (NIW)**

- Demonstrate work is in the U.S. national interest
- Traditionally focused on nationally beneficial research where employee is advancing field to a greater degree than others
- EB-2 preference category
- No recruitment required
- Self-petition option
- Premium processing for decision in 45 days
- Discretionary case-by-case decision by the agency
- H-4 spouse EAD option



#### **Outstanding Researcher (EB-1B)**

- Focus is on excellence of the physician
  - Requires meeting 2 of 6 categories
  - International recognition of outstanding achievements in field
  - Usually research focused: Publications, original research, awards, judging, leadership roles, high salary, international recognition.
- EB-1 preference category
- No recruitment required
- Employer sponsored petition
- Premium processing decision in 15 days
- Discretionary case-by-case decision
- H-4 spouse EAD option



#### **Monthly Visa Bulletin**

Employment- based	All Chargeability Areas Except Those Listed	CHINA- mainland born	INDIA	MEXICO	PHILIPPINES		
1st	С	01NOV22	01FEB22	С	С		
2nd	15MAR23	01MAR20	15JUL12	15MAR23	15MAR23		
3rd	01DEC20	01SEP20	220CT12	01DEC20	01DEC20		
Other Workers	01DEC20	01JAN17	220CT12	01DEC20	01MAY20		
4th	01JAN21	01JAN21	01JAN21	01JAN21	01JAN21		
Certain Religious Workers	01JAN21	01JAN21	01JAN21	01JAN21	01JAN21		
5th Unreserved (including C5, T5, I5, R5)	С	15DEC15	01DEC20	С	С		
5th Set Aside: Rural (20%)	С	С	С	С	С		
5th Set Aside: High Unemployment (10%)	С	С	С	С	С		
5th Set Aside: Infrastructure (2%)	С	С	С	С	С		

- DOS updates the Visa Bulletin monthly based on available visa numbers
- Can advance or retrogress
- Determines when individual can file for permanent residence ("green card") based on country of birth, not nationality



<sup>\*</sup>September 2024 Final Action

#### Making the Match: Key Considerations & Questions

- Do you sponsor physicians for <u>waivers</u>?
  - How many, and anyone I can speak with before accepting an offer?
- What retention programs/initiatives do you have?
- Do physicians stay on after the 3 years?
- Do you sponsor physicians for <u>permanent</u> <u>residence</u>? When?
- Do you support paying for physician families?



#### **Presenters**



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# Thank you!





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