

December 20, 2023

The Honorable Ur M. Jaddou  
Director  
U.S. Citizenship and Immigration Services  
U.S. Department of Homeland Security  
5900 Capital Gateway Drive  
Camp Springs, MD 20746

**Re: DHS Docket No. USCIS–2023–0005: Modernizing H-1B Requirements, Providing Flexibility in the F-1 Program, and Program Improvements Affecting Other Nonimmigrant Workers**

Dear Director Jaddou,

As organizations that together represent close to 600,000 frontline physicians, the American Academy of Family Physicians, American Academy of Pediatrics, American College of Obstetricians and Gynecologists, American College of Physicians, American Osteopathic Association, and the American Psychiatric Association write to provide comments on the Department of Homeland Security's (DHS) recent proposed rule Modernizing H-1B Requirements, Providing Flexibility in the F-1 Program, and Program Improvements Affecting Other Nonimmigrant Workers.

**H-1B physicians and other international medical graduates (IMGs) are vital to addressing our country's worsening physician shortages, strengthening our ability to respond to current and future public health threats, and ensuring equitable access to high-quality health care.** More than 10,000 physicians are employed each year through the H-1B program to provide essential patient care across the nation.<sup>1</sup> Health systems rely on H-1B physicians to fully staff hospitals and outpatient clinics, particularly in rural and other underserved communities. IMGs are more likely to become primary care physicians and practice in rural and other underserved areas where physician shortages are the most dire.<sup>2,3</sup> In fact, nearly 21 million Americans live in areas of the U.S. where foreign-trained physicians account for at least half of all physicians.<sup>4</sup> Thus, to ensure our immigration system supports H-1B physicians' ability to continue living and practicing in the United States, we offer the following comments on the proposed rule.

Labor Condition of Application

H-1B physicians and other employees are required to have a certified labor condition of application (LCA) from the Secretary of Labor. To obtain an LCA, employers must attest that certain conditions are met, including specifying the geographic area of intended employment of the H-1B visa holder. A new or amended LCA is required if an H-1B employee wants or needs to work in other geographic areas. This requirement created significant challenges for H-1B physicians, their employers, and their communities during the COVID-19 public health emergency since they could not fill health care gaps in geographies other than those specified in the LCA. The requirement to file new petitions delayed physicians' ability to provide telehealth services or provide in-person care in COVID-19 hotspots or underserved areas, potentially worsening access barriers and care delays for patients.

The proposed rule would specify that short-term placements of less than 30 days, or in some cases 60 days, in other geographic areas would not require an amended or new LCA, assuming there are no other

material changes. **Our organizations support these additional flexibilities, but we strongly recommend that DHS allow longer temporary short-term placements for physicians beyond those proposed in the rule. This would enable physicians to provide care during public health emergencies, including those due to natural disasters or localized disease outbreaks, and enable underserved communities across the nation to maximize their capacity to respond to health care emergencies.**

#### F-1 Cap-Gap Extension

Due to adjudication delays, DHS proposes to extend the cap-gap extension by six months to April 1 of the relevant fiscal year to avoid disruptions for F-1 visa students that are transitioning to H-1B employment. **Our organizations support this proposal, as we believe it will prevent employment and visa disruptions for F-1 medical students to remain in the U.S. for their residency.**

#### Definition and Criteria of a Specialty Occupation

DHS is proposing to amend the definition of “specialty occupation” to clarify that the required specialized studies and degree must be directly related to the position. DHS also has proposed to add language stating that a position is not a specialty occupation if attainment of a general degree, without further specialization, is sufficient to qualify for the position. Moreover, the proposed rule states that an individual must have at least a U.S. baccalaureate or higher degree in a directly related specific specialty, or its equivalent, to qualify for an H-1B.

Our organizations note that physicians clearly meet the education requirement by obtaining a medical degree and then undergoing between three and seven years of residency training to gain specialized knowledge and training in their chosen area of medicine. However, we are concerned that the new definition could be interpreted to mean that the Doctor of Medicine (MD) or Doctor of Osteopathic Medicine (DO) degrees physicians obtain are “general degrees” and thus disadvantage physicians. **We recommend DHS clarify in the final rule that the amended definition does not disadvantage or change the “specialty occupation” status for physicians.**

#### H-1B Cap Exemptions

DHS proposed to revise the requirements to qualify for an H-1B cap exemption when a visa holder is not directly employed by a qualifying entity and to revise the definition of “non-profit research organization” and “governmental research organization.” Specifically, the proposed rule clarifies that H-1B visa holders that equally split their work time between a cap-exempt entity and a non-cap-exempt entity may be eligible for a cap exemption. DHS also proposed to remove the requirement that a beneficiary's duties “directly and predominately further the essential purpose, mission, objectives or functions” of the qualifying institution, organization, or entity and replace it with the requirement that the beneficiary's duties “directly further an activity that supports or advances one of the fundamental purposes, missions, objectives, or functions” of the qualifying entity. Our organizations support these proposals and believe they will provide physicians and their employers with helpful flexibilities, as well as support H-1B physician researchers.

We appreciate the opportunity to provide comments on the proposed rule. Should you have any questions, please contact Meredith Yinger, the AAFP’s Senior Manager of Federal Policy at [myinger@aafp.org](mailto:myinger@aafp.org).

Sincerely,

American Academy of Family Physicians  
American Academy of Pediatrics  
American College of Obstetricians and Gynecologists  
American College of Physicians  
American Osteopathic Association  
American Psychiatric Association

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<sup>1</sup> Kahn PA, Gardin TM. Distribution of Physicians With H-1B Visas By State and Sponsoring Employer. *JAMA*. 2017;317(21):2235-2237. doi:10.1001/jama.2017.4877

<sup>2</sup> Thompson MJ, Hagopian A, Fordyce M, Hart LG. Do international medical graduates (IMGs) "fill the gap" in rural primary care in the United States? A national study. *J Rural Health*. 2009 Spring;25(2):124-34. doi: 10.1111/j.1748-0361.2009.00208.x. PMID: 19785577

<sup>3</sup> Ranasinghe PD. International Medical Graduates in the US physician workforce. *The Journal of the American Osteopathic Association*, April 2015, Vol. 115, 236-241. Available at: <https://jaoa.org/article.aspx?articleid=2213422#:~:text=Compared%20with%20US%20graduates%2C%20IMGs,the%20US%20health%20care%20system>.

<sup>4</sup> American Immigration Council. Foreign-Trained doctors are critical to serving many U.S. Communities. 2018. Available at: [https://www.americanimmigrationcouncil.org/sites/default/files/research/foreign-trained\\_doctors\\_are\\_critical\\_to\\_serving\\_many\\_us\\_communities.pdf](https://www.americanimmigrationcouncil.org/sites/default/files/research/foreign-trained_doctors_are_critical_to_serving_many_us_communities.pdf)