

December 4, 2020

The Honorable Chad Wolf  
Acting Secretary  
U.S. Department of Homeland Security  
2707 Martin L. King Avenue, SE  
Washington, DC 20528

**Re: Strengthening the H-1B Nonimmigrant Visa Classification Program  
[DHS Docket No. USCIS-2020-0018]**

Dear Acting Secretary Wolf:

On behalf of the physician and medical student members of the American Medical Association (AMA), I appreciate the opportunity to submit comments in opposition to the U.S. Citizenship and Immigration Services (USCIS), Department of Homeland Security (DHS) interim final rule (IFR) titled, Strengthening the H-1B Nonimmigrant Visa Classification Program [DHS Docket No. USCIS-2020-0018]. The AMA believes the IFR will cause immediate and lasting harm in the ability to provide timely, accessible health care services in communities throughout the U.S. Prior to the COVID-19 pandemic, the U.S. was already facing a rising shortage of physicians largely due to the growth and aging of the general population and the impending retirement of many physicians.<sup>1</sup> **The United States District Court of the Northern District of California ruled on December 1, 2020 that the IFR is in violation of the Administrative Procedures Act. For the reasons stated in the court's ruling, we agree.<sup>2</sup> The AMA strongly urges DHS to rescind the IFR. If this, or a similar rule is implemented in the future, we urge DHS to exempt physicians.**

### **The IFR Unfairly Discriminates Against H-1B Physicians**

The primary argument by the Administration regarding its need for this drastic policy shift is faulty and negatively impacts our H-1B physicians. The DHS argues that:

These changes [in the IFR] are urgently necessary to strengthen the integrity of the H-1B program during the economic crisis caused by the COVID-19 public health emergency to more effectively ensure that the employment of H-1B workers will not have an adverse impact on the wages and working conditions of similarly employed U.S. workers.<sup>3</sup>

The AMA believes that this logic is severely flawed. The U.S. is suffering from a significant physician shortage, with forecasts of a widening gap that will continue to grow over the next decade. It is projected

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<sup>1</sup> <https://www.aamc.org/news-insights/press-releases/new-findings-confirm-predictions-physician-shortage>.

<sup>2</sup> <https://www.law360.com/articles/1333641/attachments/0>.

<sup>3</sup> 85 Federal Register (FR) 63918.

that by 2032, there will be about a 50 percent growth in the population of those ages 65 and older, compared with only a 3.5 percent growth for those ages 18 or younger.<sup>4</sup> Partly due to this phenomenon, by 2033 the U.S. will experience a shortage of between 54,100 and 139,000 physicians. This number includes a projected primary care physician shortage of between 21,400 and 55,200, as well as a shortage of non-primary care specialty physicians of between 33,700 and 86,700.<sup>5</sup> As such, there is a growing need for a larger physician workforce that the U.S. cannot fill on its own, in part due to the fact that the U.S. does not have enough people in the younger generation to care for our aging country.

As such, H-1B physicians fulfill a vital and irreplaceable role. In some specialties, such as geriatric medicine and nephrology, international medical graduates (IMGs) make up approximately 50 percent of active physicians.<sup>6</sup> In other areas IMGs make up about 30 percent of active physicians including in more specialized areas of medicine such as infectious disease, internal medicine, and endocrinology.<sup>7</sup>

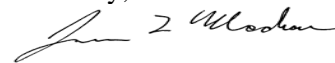
The pressing and urgent need for physicians that our country has now, and will continue to have in the future, is specifically the reason that the H-1B visa program was created. These physicians are not “causing adverse effects on the wages and job opportunities of U.S. workers,” but rather are keeping the health of our nation afloat now more than ever.

#### **Defining “Worksite” and “Third-Party Worksite” and the One-Year Limitation**

According to the IFR, DHS has updated the regulations to define “worksite” and “third-party worksite” to be consistent with the DOL’s interpretation of “place of employment.”<sup>8</sup> The DHS now defines “worksite” as “the physical location where the work is actually being performed by the H-1B nonimmigrant.” Further, per the IFR, the DHS now defines “third-party worksite” as “a worksite, other than the beneficiary’s residence in the United States, that is not owned or leased, and not operated, by the petitioner.” Additionally, the IFR provides that “where the beneficiary will be working at a third-party worksite, the maximum validity period for an approved petition is 1 year.” These changes could impact clinical faculty, residents, and fellows placed at academic medical centers, as well as researchers collaborating with colleagues on a variety of critical research projects. **The AMA requests that the DHS clarify that such activities would not be subject to this one-year limitation.**

We appreciate the opportunity to comment and urge the Administration to prioritize supporting and protecting the health and well-being of the United States by rescinding the IFR as it relates to H-1B physicians. We welcome the opportunity to share our views further. If you have any questions, please contact Margaret Garikes, Vice President, Federal Affairs, by contacting [margaret.garikes@ama-assn.org](mailto:margaret.garikes@ama-assn.org) or calling 202-789-7409.

Sincerely,



James L. Madara, MD

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<sup>4</sup> <https://www.aamc.org/download/472888/data/physicianworkforceissues.pdf>.

<sup>5</sup> AAMC (2020, June) The Complexities of Supply and Demand: Projections from 2018 to 2033. Retrieved from AAMC: <https://www.aamc.org/system/files/2020-06/stratcomm-aamc-physician-workforce-projections-june-2020.pdf>.

<sup>6</sup> <https://www.aamc.org/data-reports/workforce/interactive-data/active-physicians-who-are-international-medical-graduates-imgs-specialty-2017>.

<sup>7</sup> *Id.*

<sup>8</sup> 20 Code of Federal Regulations (CFR) 655.715.