AMA
AMERICAN MEDICAL ASSOCIATION

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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:

On behalf of the physician and medical student members of the American Medical Association (AMA), I appreciate the opportunity to offer our comments to the Department of Homeland Security (DHS), U.S. Citizenship and Immigration Services (USCIS) on the proposed rule "Modernizing H-1B Requirements, Providing Flexibility in the F-1 Program, and Program Improvements Affecting Other Nonimmigrant Workers."[1] The AMA appreciates the multiple positive proposals within this rule and the proposed streamlining of statutes. The AMA recognizes that foreign trained physicians and medical residents should be prioritized during the visa process to enable the U.S. to ensure the physician shortages in our rural and underserved communities are remedied. As such, we are supportive of the majority of the proposed changes and offer a few additional comments below.

Labor Condition Application (LCA)

A certified LCA by the Secretary of the Department of Labor (DOL) is a prerequisite for classification as an H-1B nonimmigrant and, per 8 CFR 214.2(h)(4)(i)(B), an H-1B petition for a specialty occupation worker must include a certified LCA from the DOL. In order to obtain an LCA for an H-1B the employer must attest that certain conditions are met, including determining the geographic area of intended employment of the H-1B. However, if an H-1B employee wants to work in different or multiple locations that span multiple geographic areas, amended or new LCAs are required.

The proposed rule would set forth the specific durations for short-term placements that would not require an amended or new petition, assuming there are no other material changes. This would be consistent with DOL regulations at 20 CFR 655.735 in which short-term placements of less than 30 days, or in some cases 60 days, do not require a new LCA or an amended or new petition. However, this rule also proposes to clarify that any change of work location that requires a new LCA is itself considered a material change and therefore requires the petitioning employer to file an amended or new petition with USCIS before the H–1B worker may perform work under the changed conditions.

[1] https://www.federalregister.gov/documents/2023/10/23/2023-23381/modernizing-h-1b-requirements-providing-flexibility-in-the-f-1-program-and-program-improvements.

Non-U.S. citizen international medical graduates (IMGs) play a critical role in providing health care to many Americans, especially in areas of the country with higher rates of poverty and chronic disease. Nearly 21 million people live in areas of the U.S. where foreign-trained physicians account for at least half of all physicians.[2] These areas of the country also had lower vaccination rates during the COVID-19 pandemic, higher hospitalization rates, and higher death rates.[3]

For example, if we compare the states where the most H-1B physicians are providing care and the states that experienced some of the highest rates of COVID-19 cases, the stark need to allow physicians to quickly provide care in multiple geographic locations becomes clear.

Top States Where H-1B Physicians are Providing Care[4]	**Number of Physician LCAs[5]**	**States with Increasing COVID-19 Cases[6]**
New York	1467	2,499 new positive cases per day
Michigan	945	4,109 new positive cases per day
Illinois	826	6,362 new positive cases per day
Ohio	606	3,590 new positive cases per day
Pennsylvania	602	2,235 new positive cases per day
Texas	343	6,886 new positive cases per day
California	309	4,372 new positive cases per day
Indiana	244	3,618 new positive cases per day

Note: Abbreviation: LCA, labor condition application. Total certified physician LCAs by State. Physician LCAs certified in 2016.

Unfortunately, these communities that were desperately in need were unable to fully utilize their IMG physician workforce to combat COVID-19 due to worksite requirements that restrict IMGs in H-1B status to a particular practice location. Any work outside the strict limits of the H-1B LCA is a violation of the physician's H-1B status. In situations where an employer needs an IMG who possesses H-1B status to work at additional locations, the employer is required to file an amended LCA, which can be time-consuming and costly. In normal times, these requirements are meant to protect the jobs of native-born physicians and provide additional protections for H-1B physicians. During the pandemic, however, these requirements hindered communities' abilities to respond effectively to hotspots. Moreover, due to the restrictions associated with LCAs, IMG physicians were unable to utilize temporary expedited physicians licensing, preventing them from helping combat workforce shortages during the public health emergency, and providing urgent access to medical care for underserved patient populations.

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[2] https://www.americanimmigrationcouncil.org/sites/default/files/research/foreign-trained_doctors_are_critical_to_serving_many_us_communities.pdf.
[3] https://www.mckinsey.com/industries/healthcare/our-insights/covid-19-and-rural-communities-protecting-rural-lives-and-health.
[4] JAMA Network, Peter A. Kahn, MPH, ThM, et al., Distribution of Physicians With H-1B Visas By State and Sponsoring Employer, June 6, 2017. https://jamanetwork.com/journals/jama/fullarticle/2620160?resultClick=1.
[5] *Id.*
[6] Last checked on October 30, 2020: https://coronavirus.jhu.edu/testing/tracker/overview.

Therefore, we urge the Administration to allow temporary provisions beyond the 30- or 60-day provisions proposed in the rule for H-1B physicians' LCAs. This would make worksite requirements more flexible for IMG physicians and support temporary expedited licensing for IMG physicians in H-1B status during public health emergencies. This expediated timeline for physicians will allow IMG physicians to quickly move to communities that need them during public health emergencies or disasters and allow them to stay where they are needed until the crisis has dissipated. Additionally, the provision of telehealth should be allowed for all IMGs so that physicians can provide care virtually to their patients in need without having to file an amended or separate LCA.

F-1 Cap-Gap Extension

Bona fide students can be temporarily admitted to the United States for the purpose of pursuing a full course of study. Post schooling or training the F-1 student may work in a position that aligns with the requirements of Optional Practical Training (OPT) for 12 months. Often the employer of the F-1 student will want to hire that individual permanently and will apply for an H-1B for that individual. Many times, however, an F-1 student's OPT authorization expires prior to the student being able to assume the employment specified in the approved H-1B petition, creating a gap in employment. In order to better align this transition, the Administration is proposing to extend the cap-gap extension until April 1 of the relevant fiscal year, rather than October 1 of the same fiscal year, to avoid disruptions in lawful status and employment authorization.

In 2019, 48 U.S. undergraduate medical institutions accepted 325 foreign applicants.[7] Moreover, in the 2021 application cycle, 52 foreign matriculants of U.S. Doctor of Osteopathic Medicine (DO) programs held F-1 student visas.[8] As such, we are very supportive of extending the cap-gap timeframe to make it easier for students, and in particular future medical students, to remain in the U.S. so that they can complete their education and training.

Amending the Definition and Criteria of a Specialty Occupation

The Administration is proposing to add language to the definition of "specialty occupation" clarifying that the required specialized studies and degree must be directly related to the position. DHS also is proposing 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.

Since all physicians are required to complete education and training that far exceeds an undergraduate degree, there can be no doubt that physicians meet the education requirement. Moreover, since physicians undergo anywhere between three and seven years of residency to expand their knowledge of a specific area of medicine the "highly specialized knowledge" requirement described by statute has also been met. As such, H-1B physicians clearly deserve the "specialty occupation" designation and are critical to filling a gap in our workforce that the U.S. cannot fill on its own. However, when the Administration is finalizing this rule, we would like to ensure that the Administration does not interpret the proposed requirement that the individual's education be directly related to the position in a way that disadvantages

[7] https://students-residents.aamc.org/applying-medical-school/article/applying-internationalapplicant/?fbclid=IwAR1JpQx0vsZHiUBDAWz3PiZ0GleJ7n9mS0A68yy37Kg157xtnYVwaV7wrjE.
[8] https://www.aacom.org/docs/default-source/research-reports/2021-applicant-and-matriculant-report.pdf?sfvrsn=d9fe2324_4.

physicians. Physicians graduate with a general degree, either a Doctor of Medicine (MD) or a Doctor of Osteopathic Medicine (DO) and then specialize during their residency. As such, we caution the Administration to not construe this proposed regulation too narrowly, in a way that would disqualify physicians.

H-1B Cap Exemptions

The Administration is proposing to revise the requirements to qualify for H-1B cap exemption when a beneficiary is not directly employed by a qualifying institution, organization, or entity and to revise the definition of "nonprofit research organization" and "governmental research organization." Specifically, the Administration is proposing to change the phrase "the majority of" to "at least half" to clarify that H-1B beneficiaries who are not directly employed by a qualifying institution, organization, or entity, who equally split their work time between a cap-exempt entity and a non-cap-exempt entity, may be eligible for 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 institution, organization, or entity. The AMA appreciates and supports these additional flexibilities. It is important to recognize the wide range of work that physicians are sometimes asked to perform, and we believe that these additional flexibilities will help to better support and align with the work that physicians do across the country.

Conclusion

With a projected shortfall of nearly 124,000 physicians by 2034, many communities, including rural and low-income urban areas, are in desperate need of a physician.[9] With IMGs making up 25 percent of licensed U.S. physicians, our immigration system should be designed to ensure that these vital workers remain in the U.S.[10] As such, we appreciate the opportunity to comment on this proposed rule, and we support the rule's policy objective to streamline and clarify the H-1B selection and work authorization process. We welcome the opportunity to share our views further. If you have any questions, please contact Margaret Garikes, Vice President for Federal Affairs, by calling 202-789-7409 or contacting margaret.garikes@ama-assn.org.

Sincerely,

James L. Madara, MD

[9] https://www.aamc.org/media/54681/download.

[10] https://www.ama-assn.org/education/international-medical-education/how-imgs-have-changed-face-american-medicine.