AMA
AMERICAN MEDICAL ASSOCIATION

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September 22, 2026

The Honorable Markwayne Mullin
Secretary
U.S. Department of Homeland Security
2707 Martin Luther King Jr. Avenue SE
Washington, DC 20528-0525

Re: DHS Docket No. USCIS-2026-0298 Fee for Certain H-1B Petitions

Dear Secretary Mullin:

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 U.S. Department of Homeland Security (DHS) on DHS Docket No. USCIS-2026-0298: Fee for Certain H-1B Petitions.[1] International Medical Graduates (IMGs) play an important role in the U.S. healthcare system. However, this proposed rule could have long term and devastating consequences for our IMGs, patient access, and the broader healthcare system, as it would price these physicians out of the H-1B visa category.

The proposed rule would add a $103,265 fee for all H-1B cap-subject petitions filed by employers, including those eligible for the advanced degree exemption, which would be imposed in addition to all other applicable fees or payments. This steep increase in H-1B fees will strain all healthcare system employers but hit small practices and employers in rural and underserved areas especially hard, making hiring physicians for these high need populations next to financially impossible. As a result, IMG physicians could lose access to H-1B sponsorship opportunities, and the communities that depend on them could face even greater physician shortages. Therefore, the AMA strongly encourages DHS to exempt physicians from this proposed rule.

The proposed rule is likely a violation of the Major Questions Doctrine.

The Major Questions Doctrine states that an agency exceeds its authority when it attempts to undertake actions with political and economic significance that Congress has not clearly granted the agency authority over.[2] Since the proposed rule is projected to produce an additional $8,777,525,000 in aggregate annual costs to cap-subject H-1B petitioners, it clearly implicates issues of major economic significance and deals with the "power of the purse" and the Appropriations Clause.[3] In the proposed rule, DHS even acknowledges that "the scope of the proposed fee increase in this rule is significant."[4] This means that Congress would have to explicitly authorize the significant proposed changes to the H-1B fee structure. However, Congress has not authorized DHS to make the changes that are proposed in this rule.

[1] https://www.federalregister.gov/documents/2026/08/25/2026-17324/fee-for-certain-h-1b-petitions.
[2] https://constitution.congress.gov/browse/essay/artII-S1-C1-7/ALDE_00013796/.
[3] https://www.federalregister.gov/d/2026-17324/p-342.
[4] https://www.federalregister.gov/d/2026-17324/p-149.

Historically, U.S. Citizenship and Immigration Services (USCIS) fee regulations have been structured to recover only the costs incurred by USCIS in providing immigration adjudication and naturalization services. However, this proposed rule would recover costs attributable not only to USCIS, but also to other departments and agencies including U.S. Immigration and Customs Enforcement, U.S. Customs and Border Protection, Executive Office for Immigration Review, U.S. Department of State (DOS), and U.S. Department of Labor (DOL). As such, this proposed rule goes far beyond the authority for DHS to recover costs and crosses into other agencies, namely DOS and DOL in violation of agency authority. DHS cannot set or recover fees for separate agencies unless Congress expressly delegated that authority, and no such delegation is within any of the regulations cited within the proposed rule.

Moreover, the Immigration and Nationality Act, 8 U.S.C. 1356(m) states that "fees for providing adjudication and naturalization services may be set at a level that will ensure recovery of the full costs of providing all such services…"[5] However, it does not state that levels can be set higher than what is needed for the recovery of costs. Per the USCIS Budget Overview from Fiscal Year (FY) 2027, the Immigration Examinations Fee Account for annualized FY 2026 had a total of $6,373,359,000.[6] That means that the additional proposed fee, not including the fee that could be imposed if the Presidential Proclamation is enacted, would more than double the Immigration Examinations Fee Account. This would expand the authority of DHS well beyond the recovery of the full costs of their services and instead create an excess in funds, a significant economic shift from historical practices as well as economic accountability.

Additionally, this shift will have significant political ramifications. The industries that rely on H-1B workers, particularly the medical industry, have set expectations and budgets for hiring new physicians based on historical accounting. Clinical practices, especially small independent physician practices, cannot absorb such a significant fee increase. In the proposed rule DHS even acknowledges "that USCIS may see a reduction in the number of H-1B cap registrations and some employers, including small entities, may file fewer petitions as a result of this proposed rule."[7] This is because small physician practices cannot shift to accommodate this steep fee increase. This will mean that physician openings remain vacant, and patients are unable to receive the medical care that they need. This will lead to a sicker population overall which will have significant political and fiscal ramifications reaching from Medicare, to Medicaid, to private payers, and beyond. The long-term effects of a lack of access to adequate medical care are enormous and likely unquantifiable both in terms of the impact on the health of patients and the cost associated with treating sicker individuals.

Since, as noted in *Biden v. Nebraska*, questions of economic and political significance need clear Congressional authorization, and this fee increase is significant but without such authorization, the proposed rule is clearly a violation of the Major Questions Doctrine.[8] Moreover, while the proposed rule argues that, though 8 U.S.C. 1356(m) has never been used in this manner and the proper interpretation of the Code should allow this shift, the agencies are no longer granted deference in this matter. The 2024 decision in *Loper Bright Enterprises v. Raimondo*, overturned *Chevron* deference thereby removing the power of administrative agencies to interpret ambiguous statutes.[9]

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[5] https://www.govinfo.gov/content/pkg/USCODE-2024-title8/pdf/USCODE-2024-title8-chap12-subchapII-partIX-sec1356.pdf.
[6] https://www.dhs.gov/sites/default/files/2026-04/26_0403_ocfo_fy27-budget-uscis.pdf.
[7] https://www.federalregister.gov/d/2026-17324/p-158.
[8] *Biden v. Nebraska*, 143 S. Ct. 2355, 2365–2375 (2023); https://www.supremecourt.gov/opinions/22pdf/22-506_nmip.pdf?inline=1.
[9] *Loper Bright Enterprises v. Raimondo and Relentless, Inc. v. Department of Commerce*, 144 S. Ct. 2244 (2024); https://www.supremecourt.gov/opinions/23pdf/22-451_7m58.pdf?e60lxa8p04q.

Consequently, finalization of this proposed rule could cause patients in need to go without access to physicians, detrimentally impact the health of the nation, and reach far beyond the power of DHS in violation of the Major Questions Doctrine.

The proposed rule will have adverse consequences for H-1B physicians and their employers.

If there are no available U.S. workers to fill a position, then a firm's labor need goes unmet without substantial investment in worker recruitment and training. Accordingly, importing needed workers allows companies to innovate and grow, creating more work opportunities and higher-paying jobs for U.S. workers. As such, the H-1B nonimmigrant visa program allows U.S. employers to temporarily employ foreign workers in specialty occupations. A "specialty occupation" is defined by statute as an occupation that requires the theoretical and practical application of a body of "highly specialized knowledge," and a bachelor's or higher degree in the specific specialty, or its equivalent, as a minimum for entry into the occupation in the U.S.[10]

Since all physicians are required to complete education and training that far exceed an undergraduate degree, there can be no doubt that physicians meet the education requirement. Moreover, since physicians undergo anywhere between three and eight 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.

The U.S. is suffering from a major physician shortage, with forecasts of a widening gap that will continue to grow over the next decade. The data show that the U.S. population is aging, with the share of the population age 65 and older steadily increasing from 12.4 percent in 2004 to 18.0 percent in 2024, and the share of children declining from 25.0 percent to 21.5 percent.[11] Partly due to this phenomenon, by 2036 the U.S. will experience a shortage of about 86,000 physicians.[12] 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. physically does not have enough people in the younger generation to care for our aging population. As such, H-1B physicians fulfill a vital and irreplaceable role.

The proposed rule, however, will either cause these much-needed physicians to be priced out of a market that cannot afford to lose them, or will require employers to pay a much higher visa fee, which could cause fewer physicians to be hired overall during a time when we are facing a severe physician shortage. The current pressing and urgent need for physicians will not abate in the short or long-term and these types of scenarios are precisely the reason that the H-1B visa program was initially created. These physicians are essential to maintaining the health of our nation, and as such, should be provided with an exemption to this proposed fee. We would also be remiss in failing to point out that, while nonprofit hospitals may be exempt from this new fee, the proposed rule provisions still fall squarely on all for-profit hospitals and independent physician practices, thus the proposed rule will have a massive impact on the overarching healthcare workforce.

[10] *See* 8 U.S.C 1101(a)(15)(H)(i)(b), 1184(i).
[11] https://www.census.gov/newsroom/press-releases/2025/older-adults-outnumber-children.html.
[12] https://www.aamc.org/news/press-releases/new-aamc-report-shows-continuing-projected-physician-shortage.

The proposed rule could overlap with the Presidential Proclamation on "Restriction on Entry of Certain Nonimmigrant Workers" thereby increasing the fee to $203,265 for a cap subject H-1B visa.

The Presidential Proclamation entitled, "Restriction on Entry of Certain Nonimmigrant Workers" subjects new H-1B visas to a $100,000 fee to be paid by the prospective employer, upon initial application for an H-1B visa as of September 21, 2025.[13] This Proclamation, when initially in effect, caused rural and other underserved communities that were relying on H-1B physicians to help treat our country's highest-need patients to have long-lasting vacancies and reduced care capacities. Maintaining a robust healthcare workforce in the U.S. that can address the health needs of all our U.S. patients is in the best interest of our nation. However, if underserved populations were to experience the same healthcare use patterns as populations with fewer barriers to access, the U.S. would need up to 202,800 more physicians than it has just to meet current demand.[14] Notably, between 2001 and 2024 almost 23,000 H-1B physicians worked in underserved communities. Accordingly, H-1B physicians play a critical role in filling this void, especially in areas of the U.S. with high-need, complex populations.

As such, it is important to support and expand pathways for these physicians to be able to enter the U.S. and care for our U.S. patients. The U.S. healthcare workforce relies upon physicians from other countries to provide high-quality and accessible patient care. However, the $100,000 fee, though currently blocked by the courts, has already had a chilling effect on employers hiring desperately needed physicians.[15] To layer another $103,265 fee on top of the Proclamation essentially constitutes a "double whammy" and would make hiring physicians impossible for small and underserved practices. This would leave our patients that are most in need without access to the medical care that they deserve.

The proposed rule would detrimentally and disproportionately impact rural and other medical underserved communities.

The shortage of physicians is particularly acute in rural and underserved communities. According to the Health Resources and Services Administration, over 330 million people currently live in Health Professional Shortage Areas (HPSAs) in the U.S. requiring approximately 38,000 additional providers to eliminate this shortage.[16]

IMG physicians help to mitigate care shortages and, in some specialties, such as internal medicine, neurology, psychiatry, and pediatrics, make up between 25 to 40 percent of active physicians.[17] Accordingly, H-1B physicians play a critical role in filling our physician workforce gaps, especially in areas of the U.S. with high-need populations.

In 2024, almost 25 percent of licensed U.S. physicians were IMGs, with the number of IMGs in active practice growing by nearly 18 percent since 2010.[18] Furthermore, in 2021, about 64 percent of IMGs were practicing in Medically Underserved Areas or HPSAs, with almost 46 percent of these IMGs practicing in rural areas.[19] This aligns with the statistic that confirms that states with a higher percentage of H-1B

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[13] https://www.whitehouse.gov/presidential-actions/2025/09/restriction-on-entry-of-certain-nonimmigrant-workers/.
[14] https://www.aamc.org/advocacy-policy/addressing-physician-workforce-shortage.
[15] https://www.uscis.gov/working-in-the-united-states/h-1b-specialty-occupations.
[16] https://data.hrsa.gov/topics/health-workforce/shortage-areas/dashboard.
[17] https://pmc.ncbi.nlm.nih.gov/articles/PMC5901803/#:~:text=IMGs%20showed%20significantly%20greater%20representation,and%200.3%25%20for%20internal%20medicine.
[18] https://www.ama-assn.org/education/international-medical-education/how-imgs-have-changed-face-american-medicine.
[19] https://pmc.ncbi.nlm.nih.gov/articles/PMC8221155/.

physicians are often those with lower physician density.[20] Therefore, IMGs are invaluable to the U.S. healthcare system, especially in underserved areas of the country with higher rates of poverty and chronic disease.[21]

About 11,000 H-1B cap subject physicians are hired each year to help provide much needed care.[22] However, current fees for H-1B processing are only a few thousand dollars, which makes this hiring process possible for small independent practices. For example, across 3,240 counties those with the "highest poverty level had a significantly higher percentage of H-1B–sponsored physicians than those with the lowest."[23] But with the proposed rule changes, small private practices that provide care, especially in rural areas, will not be able to absorb the higher fees for these needed physicians. As such, much needed physician help and patient care will be reduced or lost altogether.

The AMA firmly believes that as we continue to face a mounting physician shortage in the U.S., the Administration should be promoting and easing the way for IMGs to practice in the U.S. starting with the exemption of physicians from the proposed rule.

Conclusion

We appreciate the opportunity to comment on this proposed rule. The physician workforce shortage is well documented, and the U.S. healthcare workforce relies upon physicians from other countries to provide high-quality and accessible patient care. This is demonstrated by the fact that nearly 20 million Americans live in areas of the U.S. where foreign-trained physicians account for at least half of all physicians.[24] This shortage is a real crisis with tangible, negative effects on U.S. citizens. This proposed rule will only exacerbate serious access to care challenges in our nation. As such, we urge DHS to prioritize supporting and protecting the health and wellbeing of the U.S. population by exempting H-1B physicians from this proposed rule. We welcome the opportunity to share our views further.

Please reach out to me directly at 312-464-5288 or John.Whyte@ama-assn.org if you have questions or need further information.

Sincerely,

John Whyte, MD, MPH

[20] https://pubmed.ncbi.nlm.nih.gov/40696225/.
[21] https://www.americanimmigrationcouncil.org/wp-content/uploads/2025/01/foreign-trained_doctors_are_critical_to_serving_many_us_communities.pdf.
[22] https://www.uscis.gov/sites/default/files/document/reports/ola_signed_h1b_characteristics_congressional_report_FY24.pdf.
[23] https://pmc.ncbi.nlm.nih.gov/articles/PMC12573110/#jld250074r1.
[24] https://www.americanimmigrationcouncil.org/wp-content/uploads/2025/01/foreign-trained_doctors_are_critical_to_serving_many_us_communities.pdf.