AMA AMERICAN MEDICAL ASSOCIATION

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Chad Wolf
Acting Secretary
Office of Information and Regulatory Affairs
Office of Management and Budget
725 17th Street, NW
Washington, DC 20503

Re: Opposition to DHS Docket No. ICEB-2019-0006 "Establishing a Fixed Time Period of Admission and an Extension of Stay Procedure for Nonimmigrant Academic Students, Exchange Visitors, and Representatives of Foreign Information Media"

Dear Acting Secretary Wolf:

On behalf of the physician and medical student members of the American Medical Association (AMA), I welcome the opportunity to provide comments on the U.S. Department of Homeland Security's (DHS) proposed rule concerning "Establishing a Fixed Time Period of Admission and an Extension of Stay Procedure for Nonimmigrant Academic Students, Exchange Visitors, and Representatives of Foreign Information Media." The proposed administrative change to eliminate "duration of status" as an authorized period of stay would significantly disrupt the medical specialty and subspecialty training of thousands of foreign national physicians in the United States in J-1 visa status, which in turn will have severe implications for patient care in the United States. As such, **the AMA urges DHS to withdraw the proposed rule as it relates to J-1 International Medical Graduates (IMG).** We are addressing a few of the more pertinent issues below.

The J-1 physicians who would be affected by the proposed change have been thoroughly vetted, are already here providing supervised patient care, and are being carefully monitored.

DHS is proposing to put an end to admitting J-1 physicians for duration of status (D/S) and instead, admitting J-1 physicians only until the program end date noted in their Form I-20 or DS-2019. DHS has stated that the reason for this change is to periodically and directly assess whether these nonimmigrants are complying with the conditions of their classifications and U.S. immigration laws, as well as to obtain timely and accurate information about the activities in which the nonimmigrants have engaged, and plan to engage, during their temporary stay within the United States.

Currently, a prospective exchange visitor must be sponsored by a U.S. Department of State (DOS)-designated program sponsor to be admitted to the United States in the J nonimmigrant category or to participate in an exchange visitor program. The DOS-designated sponsor, which in this case is the Educational Commission for Foreign Medical Graduates (ECFMG), will issue the prospective J-1 physician a Form DS-2019, Certificate of Eligibility for Exchange Visitor (J-1) Status. The DS-2019 permits a prospective exchange visitor to apply for a J-1 nonimmigrant visa at a U.S. embassy or consulate abroad, or seek admission as a J-1 nonimmigrant at a port of entry.

Due to this process, J-1 physicians are already a carefully monitored cohort. Since ECFMG sponsors all J-1 physicians, it coordinates closely with U.S. teaching hospitals and with the U.S. DOS throughout each academic year to ensure that J-1 physicians comply with all federal requirements. Additionally, under the current process, J-1 physicians are required to apply to ECFMG to extend their visa sponsorship on an annual basis. This follows the regulations that stipulate J-1 physician applicants must "submit an agreement or contract from a U.S. accredited medical school, an affiliated hospital, or a scientific institution to provide the accredited graduate medical education. The agreement or contract must be signed by both the alien physician and the official responsible for the training."[1] While most U.S. residency programs last for three to seven years, and fellowships from one to three years, training contracts are renewed annually to ensure that competencies are met and that a physician is fit to advance in their training program.

The required annual renewal process is rigorous and provides assurance that J-1 physicians are compliant with their visa requirements and ensuring that they are progressing through their training programs as planned. Moreover, Accreditation Council for Graduate Medical Education (ACGME) has institutional and individual training specialty and subspecialty requirements that ensure J-1 physicians receive appropriate supervision and are engaged in quality educational experiences at carefully vetted learning institutions. In addition, each teaching hospital that trains J-1 physicians assigns at least one staff member to communicate directly with ECFMG to confirm ongoing participation throughout an academic year, among other reporting responsibilities. Under duration of status, a physician's J-1 visa is extended automatically each year only after a J-1 sponsorship extension has been approved by ECFMG following the vigorous yearly vetting process is complete.

The yearly ACGME review is just one of many mechanisms through which J-1 physicians are monitored. Since 2003, all J-1 physicians have been tracked in the Student and Exchange Visitor Information System (SEVIS), a joint database of DOS and DHS. Training program participation dates and corresponding authorized periods of stay for every J-1 physician are visible easily to DOS and DHS through SEVIS. This is confirmed by U.S. Immigration and Customs Enforcement (ICE) on its website where it states:

> SEVIS tracks and monitors nonimmigrant students and exchange visitors…If accepted for participation in a Department of State-verified exchange visitor program, exchange visitors may be admitted to the United States with J nonimmigrant status. Records of these nonimmigrant admissions and continued participation in these educational programs are maintained in SEVIS. Further, SEVIS enables SEVP to assure proper reporting and record keeping by schools and exchange visitor programs, thereby ensuring data currency and integrity. SEVIS also provides a mechanism for student and exchange visitor status violators to be identified so that appropriate enforcement is taken (i.e., denial of admission, denial of benefits or removal from the United States).[2]

As a result of the detailed data already available in SEVIS, there is no ambiguity with respect to the last date of program participation or related authorized period of stay, which the proposed rule claims to

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[1] https://www.ecfr.gov/cgi-bin/retrieveECFR?gp=&SID=1bc531bf257789e45b3049bff8b50d64&r=PART&n=22y1.0.1.7.35#se22.1.62_127; accessed 10/14/2020.
[2] https://www.ice.gov/sevis; accessed 10/6/2020.

address. Moreover, according to DHS' own *Exit/Entry Overstay Report* for fiscal year 2019, the "suspected" in-country overstay rate across all 15 categories of the J visa was 1.79 percent.[3] There is no evidence that physicians overstay their permissible period of authorized stay as recorded in SEVIS.

As such, since physicians in J-1 status are tracked meticulously through SEVIS, U.S. Immigration and Customs Enforcement (ICE) already knows where these physicians are at all times and exactly when these physicians complete their programs. SEVIS data includes dates of entry, periods of authorized training program participation, and definitive program end dates. SEVIS alerts ICE if any J-1 physician overstays or otherwise fails to comply with the law. DHS can effectively enforce the current immigration laws by wisely using its resources to engage in data-driven initiatives that focus on risk factors, rather than subject entire nonimmigrant categories to an expensive, cumbersome, and time-consuming extension of stay process that merely duplicates the efforts that ECFMG will continue to undertake in order to comply with SEVIS reporting obligations. Therefore, the proposed rule is duplicative, unnecessary, and wasteful since the combination of ECFMG actions and SEVIS data is already sufficient to accomplish DHS' goals.

The proposed rule ignores DHS' and USCIS' inability to process extension applications in a timely manner, making it impossible to ensure J-1 physicians can efficiently complete residencies.

DHS is proposing to do away with the D/S in favor of only admitting J-1 physicians until the program end date noted in their Form I-20 or DS-2019, not to exceed four years, unless they are subject to a more limited two-year admission, plus a period of 30 days following their program end date. Individuals who need time beyond their period of admission would have to timely file a complete extension of stay (EOS) with U.S. Citizenship and Immigration Services (USCIS) before their prior admission expires. As such, under the proposed rule, J-1 physicians applying for EOS would need to file a Form I-539 with the required fee, provide biometrics, and possibly undergo an interview.

While the rule provides an admission period of two to four years, this timeframe will not be applicable to J-1 physicians due to the required annual application process mentioned above. Thus, the proposed rule change creates an impossible timeline for J-1 physicians and the teaching hospitals where they train. If implemented, all J-1 physicians will be subject to a one-year period of authorized stay annually. As such, they will be required to apply each year for an extension of stay through a USCIS Service Center in the United States or through a consulate abroad. This is after, and in addition to, renewing their sponsorship with ECFMG.

Teaching hospitals typically issue contracts each year in February or March in advance of a new academic year starting in July. With current published USCIS change/extension of status processing times lasting as long as 19.5 months[4] thousands of J-1 physicians will see their training programs interrupted and, as a result, patient care at hundreds of U.S. teaching hospitals will be compromised.

In addition, the ability for J-1 physicians to engage in "employment incident to status" for up to 240 days while an EOS application is pending will not cover the potential 19.5 month wait time. The fact that some applicants may have to wait for an approval of the EOS for longer than their training period of 12 months is unworkable. Moreover, this extended wait will create great uncertainty for J-1 physicians and the teaching hospitals that rely on their services for up to two-thirds of each academic year. J-1 physicians

[3] https://www.dhs.gov/sites/default/files/publications/20_0513_fy19-entry-and-exit-overstay-report.pdf; accessed 10/15/2020.
[4] https://egov.uscis.gov/processing-times/; accessed 10/15/2020.

whose applications are not adjudicated will be forced to cease training on day 240. This lengthy wait will also be an obstacle to the movement of physicians between programs, for example from residency to fellowship, which is a routine part of the progressive training of physicians. Furthermore, travel abroad to extend visa status during residency and fellowship is not a viable option due to travel restrictions, expense, and time away from the training program that will be required. **In short, elimination of duration of status will create an untenable situation for J-1 physicians, teaching hospitals, and the patients that they serve.**

Moreover, DHS acknowledged in the rule that a one-year admission for all F and J nonimmigrants would be unsustainable because it could result in significant costs to both nonimmigrants and DHS. Beyond creating a huge financial burden, DHS stated that such a restrictive admission period could have severe unintended consequences. For example, if USCIS' EOS processing time is significantly lengthened due to a one-year admission period, cases presenting national security or fraud concerns would not necessarily be prioritized, thereby allowing a mala fide student or exchange visitor to remain in the United States until USCIS has adjudicated his or her petition. Since J-1 physicians would have to undertake a yearly EOS, all of the problems that DHS identified with the yearly application process will exist for J-1 physicians.

Furthermore, DHS has underestimated the burden that would be associated with processing EOS applications. DHS estimated that approximately 12,000 J-1 exchange visitors would request an EOS per year. However, there are more than 12,000 J-1 physicians at nearly 750 teaching hospitals across the country. All 12,000 of these J-1 physicians would be required to apply for an EOS every year. As such, the processing burden for J-1 applications was severely underestimated and clearly did not take into account the considerable impact that this rule would have on J-1 physicians. Since the yearly number of applications was so severely underestimated, the proposed rule will be even more expensive to implement, create even greater backlogs than those that currently exist, and will result in extended adjudication timelines, uncertainty, disruption, and harm to physicians, hospitals, and the patients they serve.

The proposed rule would result in significant disruption to patient care at teaching hospitals across the United States.

DHS identified 23 hospitals and related institutions sponsoring J exchange visitor programs. Of these 23 hospitals, 22 were nonprofit. DHS assumed that all 22 private nonprofit hospitals are small entities. Though this is an underestimation on the part of DHS, as there are J-1 physicians at nearly 750 teaching hospitals across the country, it is abundantly clear that the burden of this rule would be placed directly on the J-1 physicians, and the nonprofit hospitals that hire many of these physicians, in addition to the many rural, underserved, and low-income communities that they work with.

The United States is suffering from a major physician shortage with forecasts of a widening gap that will continue to grow over the next decade. The Association of American Medical Colleges (AAMC) predicts that, by 2033, the United States 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.[5] With more than 40 percent of international medical graduates working in primary care, our country cannot afford to adopt a

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[5] 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..

policy that will deter foreign national physicians from coming to the United States for training or discourage U.S. teaching hospitals from selecting them to join their programs.

Furthermore, if this proposed rule is implemented, teaching hospitals will face a sustained and rolling state of uncertainty when the processing of extensions of authorized stay fails to keep pace with training program start dates—a problem that will only get bigger over time. The failure of USCIS to keep up with processing applications is already evident. Even without the additional strains that this proposed rule will place on the processing system, USCIS average processing times have increased by 46 percent over the past two fiscal years and 91 percent since fiscal year 2014.[6] Increasing the number of applications submitted to USCIS at a time when the agency is handling a significant backlog and funding crisis will have an immediate, detrimental impact not only on teaching hospitals, patient care and safety, but also on the entire immigration system. The ensuing instability will likely drive foreign national physicians to seek training opportunities in other countries. Thus, the quality of those engaged in U.S. residency and fellowship training will be diminished and, ultimately, the U.S. physician shortage, particularly in underserved communities, will be exacerbated.

If enacted this rule will make U.S. medical school and residencies less desirable and less competitive internationally.

The Institute of International Education estimates that during the 2018 academic year, international students alone had a positive economic impact of $44.7 billion from tuition and fees, food, clothing, travel, textbooks, and other spending. If these students and exchange visitors choose another country over the United States due to this proposed rule, then the reduced demand could result in a decrease in enrollment of U.S. medical schools, therefore, negatively impacting school programs in terms of forgone tuition and other fees, jobs in communities surrounding schools, and the U.S. economy.

The number of J-1 physicians participating in U.S. training programs has grown 62 percent over the past decade, illustrating that these physicians have become an essential part of the U.S. health care system, education system, and economy. These residents come from 1,200 different medical schools and are selected through a competitive process to join U.S. residency and fellowship programs through the National Resident Matching Program. As such, J-1 physicians bring valuable cultural and intellectual diversity to their U.S. training programs.

However, residency training requires between three and seven years depending on the resident's specialty. If programs cannot count on J-1 physicians for uninterrupted training and patient care, they may choose to invest in other, less qualified candidates. This will likely mean that fewer J-1 physicians will apply to U.S. medical schools and residencies knowing that they are unlikely to be matched due to administrative burdens. As such, medical school and residency programs will become less competitive which will prove to be a dangerous trend that ultimately will diminish the overall quality of the U.S. physician workforce. The negative impacts on U.S. health care will be great, particularly in rural and urban medically underserved areas of the country where J-1 physicians represent a much higher percentage of the trainee and practicing physician workforce.

DHS has stated that it believes that there will not be a significant impact in participation in U.S. medical schools and residencies. However, this is an overconfident assessment. The burden alone of having to

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[6] AILA Policy Brief: USCIS Processing Delays Have Reached Crisis Levels Under the Trump Administration, January 30, 2019, https://www.aila.org/infonet/aila-policy-brief-uscis-processing-delays.

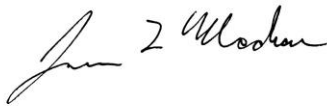
apply for an EOS nearly seven times just to complete a residency is reason enough for physicians to choose other countries for their training. Not only that but, if residents have to apply for an EOS every year and are stuck waiting for an approval period lasting longer than their initial one year reauthorization period, highly qualified physicians will choose to go to other countries rather than risk being unable to finish their training.

The loss of J-1 physicians due to the proposed rule would negatively impact the physician workforce and feeder programs like the Conrad State 30 program, which is meant to operate seamlessly from medical residency programs to provisioning of foreign-born physicians to work in medically underserved areas. Under current practice, these new doctors are able to transfer directly from their J-1 residency to practicing at Conrad State 30 programs which exist in every state. By diminishing the domestic pool of foreign-born doctors and arbitrarily cutting short their U.S.-based training, the changes DHS has proposed would directly threaten the Conrad State 30 program. Since J-1 physicians who complete their training programs remain lawfully in the United States under the Conrad State 30 program to work in medically underserved or health professions shortage areas of the country, this proposed rule directly threatens the quality of care that both our rural and our most impoverished U.S. patients receive. These unnecessary changes significantly overcomplicate the administrative process at the expense of foreign-born physicians.

Now, more than ever, J-1 physicians play an essential role in ensuring accessible patient care. Jeopardizing the status of more than 12,000 physicians nationwide who are desperately needed to help fight this pandemic will have an immediate and devastating impact on our health care system, depriving Americans of life-saving care when they need it most.

We appreciate the opportunity to comment and urge the Administration to prioritize supporting and protecting the health and well-being of the U.S. by withdrawing the proposed rule as it relates to J-1 IMGs. We welcome the opportunity to share our views further. If you have any questions, please contact Margaret Garikes, Vice President for Federal Affairs, by contacting margaret.garikes@ama-assn.org or calling 202-789-7409.

Sincerely,



James L. Madara, MD