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## **Immigration: Foreign Physicians and the J-1 Visa Waiver Program**

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# Immigration: Foreign Physicians and the J-1 Visa Waiver Program

## Summary

The Educational and Cultural Exchange Visitor program has become a gateway for foreign medical graduates (FMGs) to gain admission to the United States as nonimmigrants for the purpose of graduate medical education and training. The visa most of these physicians enter under is the J-1 nonimmigrant visa. Under the J-1 visa program, participants must return to their home country after completing their education or training for a period of at least two years before they can apply for another nonimmigrant visa or legal permanent resident (LPR) status, unless they are granted a waiver of the requirement.

The J-1 visa waiver program has recently undergone significant change. In February 2002, the United States Department of Agriculture (USDA), which had historically been the largest sponsor of waivers, decided to end its participation as an interested government agency (IGA). This development and the pending expiration of the “Conrad 20” program, which allowed 20 waivers per state, threatened the continued availability of waivers. These developments raised concerns among many in medically underserved areas because it is often difficult for them to find U.S. medical graduates willing to practice in these areas. Bills introduced in the 107<sup>th</sup> Congress proposed changes to the “Conrad 20” program, including expanding the program and making it permanent.

In an effort to ensure the continued availability of medical care in underserved areas, the Department of Health and Human Services (HHS) announced it would assume USDA’s role as a sponsor of J-1 primary care physicians. This was a policy change for HHS which has historically been very restrictive in its sponsorship of waivers. Prior to this announcement, HHS had limited sponsorship to research physicians and scientists involved in research of international or national significance.

On November 2, 2002, the “Conrad 20” program was extended until 2004 and the number of waivers available to states was increased to 30. This program, which is now referred to as the “Conrad 30” or “State 30” program, expired on June 1, 2004.

Several measures, to address the expiration of the “Conrad 30” program were introduced in the 108<sup>th</sup> Congress. On December 3, 2004, S. 2302 became P.L. 108-441. The new law extends the program until June 1, 2006; exempts physicians granted waivers from the H-1B numerical limits; allows states to hire primary and speciality care physicians; and place up to five physicians in shortage areas designated by the state.

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# Immigration: Foreign Physicians and the J-1 Visa Waiver Program

## Introduction

International medical graduates (IMGs) are foreign nationals or U.S. citizens who graduate from a medical school outside of the United States. In 2002, the most recent year for which data are available, there were 853,187 practicing physicians in the United States. IMGs accounted for 24.7% (210,355) of these, and 27.4% (26,588) of physicians in residency and fellowship programs.<sup>1</sup> The use of foreign IMGs in many rural communities of the United States areas has allowed states to ensure the availability of medical care to their residents.

This report focuses on those IMGs who are foreign nationals, hereafter referred to as foreign medical graduates (FMGs). Many FMGs first entered the United States to receive graduate medical education and training as cultural exchange visitors through the J-1 cultural exchange program. Other ways for FMGs to enter the United States include other temporary visa programs as well as permanent immigration avenues such as family- or employment-based immigration, the diversity lottery, and humanitarian relief provisions.<sup>2</sup> This report focuses on FMGs entering through the J-1 program.

## J-1 Waiver Program

Many FMGs enter the United States under the current Educational and Cultural Exchange Visitor Program on a J-1 nonimmigrant visa.<sup>3</sup> Nonimmigrants are admitted for a specific purpose and a temporary period of time. Most nonimmigrant visa categories are defined in §101(a)(15) of the Immigration and Nationality Act (INA). These visa categories are commonly referred to by the letter and numeral that denotes their subsection in §101(a)(15), e.g., B-2 tourists, E-2 treaty investors, F-1 foreign students, H-1B temporary professional workers, or J-1 cultural exchange

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<sup>1</sup> American Medical Association, *Physician Characteristics and Distribution in the U.S. 2004* (Chicago: AMA Press, 2003).

<sup>2</sup> For more information on immigration issues, see CRS Report RS20916, *Immigration and Naturalization Fundamentals*, by Ruth E. Wasem.

<sup>3</sup> The J-1 nonimmigrant category was established by the Mutual Education and Cultural Exchange Act of 1961. This act is commonly referred to as the Fulbright-Hays Act. See **Appendix A** for a legislative history of the Educational and Cultural Exchange Visitor Program.

participants.<sup>4</sup> The J-1 visa includes nonimmigrants such as professors, students, au pairs, research scholars, camp counselors, and foreign medical graduates.

**Table 1** provides data on the number of physicians in residency programs as of August 2003. As the table indicates, J visa holders make up 15.8% of IMGs in residency programs.

**Table 1. Citizenship/Visa Status of Physicians and International Medical Graduates in Residency Programs, August 1, 2003**

Physicians in residency programs	Total		International medical graduates	
	Number	%	Number	%
U.S. Citizens	74,985	75	6,851	25.8
Legal permanent residents	9,457	9.5	6,673	25.1
B-1, B-2 temporary visitor	75	0.1	75	0.3
F-1 student	344	0.3	85	0.3
H-1, H-1B, H-2, H-3 temporary worker	2,399	2.4	2,250	8.5
J-1, J-2 <sup>a</sup> exchange visitor	4,326	4.3	4,192	15.8
Other/unknown	8,299	8.3	6,374	24
Total	98,258	100.0	25,783	100.0

**Source:** CRS presentation of data presented in S. Brotherton, P. Rockey, and S. Etzel, "U.S. Graduate Medical Education, 2003-2004," *JAMA*, vol. 292, no. 9, Sept. 1, 2004.

a. A J-2 nonimmigrant is the spouse or child of a J-1 nonimmigrant.

As exchange visitors, FMGs can remain in the United States on a J visa until the completion of their training, typically for a maximum of seven years. After that time, they are required to return home for at least two years before they can apply to change to another nonimmigrant status or legal permanent resident (LPR) status. Under current law, a J-1 physician can receive a waiver of the two-year home residency requirement in several ways:

- the waiver is requested by an interested government agency (IGA);
- the FMG's return would cause extreme hardship to a U.S. citizen or LPR spouse or child; or
- the FMG fears persecution in the home country based on race, religion, or political opinion.

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<sup>4</sup> For additional information on nonimmigrant visas, see CRS Report RL31381, *U.S. Immigration Policy on Temporary Admissions*, by Ruth E. Wasem.

Most J-1 waiver requests are submitted by an IGA and forwarded to the Department of State for a recommendation. If the Department of State recommends the waiver, it is forwarded to U.S. Citizenship and Immigration Service (USCIS) in the Department of Homeland Security (DHS) for final approval.<sup>5</sup> Upon final approval by USCIS, the physician's status is converted to that of an H-1B professional specialty worker, and the individual is counted against the annual H-1B cap of 65,000. In instances where the H-1B cap has been met, the physician's J visa status may be extended, and the physician would be granted H-1B status in the following year.

## **Interested Government Agencies (IGAs)**

An IGA may request a waiver of the two-year foreign residency requirement for an FMG by showing that his or her departure would be detrimental to a program or activity of official interest to the agency. In return for sponsorship, the FMG must submit a statement of "no objection" from his or her home country, have an offer of full-time employment, and agree to work in a health professional shortage area or medically underserved area for at least three years. According to USCIS regulations, the FMG must be in H-1B status while completing the three-year term and must agree to begin work within 90 days of receipt of the waiver. If an FMG fails to fulfill the three-year commitment, he or she becomes subject to the two-year home residency requirement and may not apply for a change to another nonimmigrant, or LPR status until meeting that requirement. Although any federal government agency can act as an IGA, the main federal agencies that have been involved in sponsoring FMGs are the Department of Veterans Affairs (VA), the Department of Health and Human Services (HHS), the Appalachian Regional Commission (ARC), and the United States Department of Agriculture (USDA).<sup>6</sup> State health departments may also act as IGAs.

**Department of Veterans Affairs (VA).** The Department of Veterans Affairs allows facility directors to request J-1 waivers in instances where it is in the interest of the Department and its programs, and efforts to recruit a qualified U.S. citizen or LPR have failed. The facility director must supply documentation of recruitment efforts and detailed information on applicants who did not qualify for the position. In order for the VA to consider a waiver application, the applicant must submit copies of his or her medical license, visa, test results, proposed and current clinical privileges, references, curriculum vitae, and current address and phone numbers. Once a waiver has been approved, the physician must serve for at least three years in a VA facility. The facility does not have to be in a designated shortage area.

**Department of Health and Human Services (HHS).** Historically, the Department of Health and Human Services had been very restrictive in its

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<sup>5</sup> Oversight of the J-1 program has been the responsibility of several agencies over the past 20 years; it is currently the responsibility of the Department of State. While the Department of State recommends J-1 waiver requests, DHS has the authority to determine if the exchange visitor is subject to the home residency requirement and to approve the waiver.

<sup>6</sup> Other participants in the program have been the Department of Housing and Urban Development (HUD), which ended its participation in 1996, and the U.S. Coast Guard.

sponsorship of J-1 waiver requests. HHS emphasized that the exchange visitor program was a way to pass advanced medical knowledge to foreign countries, and that it should not be used to address medical underservice in the United States.<sup>7</sup> HHS' position was that medical underservice should be addressed by programs such as the National Health Service Corps. Prior to December 2002, HHS only sponsored waivers for physicians or scientists involved in biomedical research of national or international significance. In December 2002, HHS announced that it would begin sponsoring J-1 waiver requests for primary care physicians and psychiatrists in order to increase access to healthcare services for those in underserved areas.<sup>8</sup> HHS began accepting waiver applications on June 12, 2003, but suspended its program shortly after for reevaluation. On December 10, 2003, HHS released new program guidelines, which many maintain are more restrictive and have limited the states' access to physicians.

**Appalachian Regional Commission (ARC).** Established by Congress in 1965, ARC is a joint federal and state entity charged with, among other things, ensuring that all residents of Appalachia have access to quality, affordable health care. The region covered by ARC consists of all of West Virginia and parts of Alabama, Georgia, Kentucky, Maryland, Mississippi, New York, North Carolina, Ohio, Pennsylvania, South Carolina, Tennessee, and Virginia.

ARC submits a request for a waiver at the request of a state in its jurisdiction. The waiver must be recommended by the governor of the sponsoring state. In return, the FMG must agree to provide primary care for at least 40 hours a week for three years at a health professional shortage area facility. The facility must be a Medicare or Medicaid-certified hospital or clinic that also accepts medically indigent patients. The facility must prove that it has made a good faith effort to recruit a U.S. physician in the six months preceding the waiver application, and the J-1 physician may not have been out of status for more than six months after receiving the J-1 visa. In addition, the physician must be licensed by the state in which he or she will be practicing, and must have completed a residency in family medicine, general pediatrics, obstetrics, general internal medicine, general surgery, or psychiatry. The physician must sign an agreement stating that he or she will comply with the terms and conditions of the waiver, and will pay the employer \$250,000 if he or she does not practice in the designated facility for three years.

**United States Department of Agriculture (USDA).** To help medically underserved rural areas, USDA became a participant in the J-1 waiver program in 1994. It ceased its participation in 2002. While participating in the J-1 waiver program, USDA sponsored over 3,000 waivers for J-1 physicians. As a participant it required that all applications submitted be initiated by a health care facility or state department of health. To qualify for a USDA-sponsored waiver, the physician was required to have an employment offer of no less than three years from a health care

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<sup>7</sup> See General Accounting Office, *Foreign Physicians: Exchange Visitor Program Becoming Major Route to Practicing in U.S. Underserved Areas* (GAO/HEHS-97-26, Dec. 30, 1996).

<sup>8</sup> U.S. Department of Health and Human Services, "HHS Exchange Visitor Program, Interim Final Rule," *Federal Register*, vol. 67, no. 244, Dec. 19, 2002, p. 77692.

facility in a designated medically underserved rural area, and was required to work at least 40 hours a week as a primary care physician.

Following the September 11, 2001 terrorist attacks, the USDA Office of the Inspector General recommended that USDA review its participation in the J-1 waiver program. On September 26, 2001, the processing of waiver applications was suspended pending the outcome of the review. As a part of this review, USDA forwarded seven pending applications to the Department of State for screening. Three of the applicants turned up on government watch lists. On February 28, 2002, USDA officially announced it would no longer participate in the J-1 visa waiver program citing security concerns and the inability to conduct adequate background and site checks.<sup>9</sup>

In March 2002, the USDA returned 86 waiver applications to 25 states.<sup>10</sup> On April 16, 2002, USDA announced it would act as a temporary IGA to process the 86 pending waiver applications it had returned and ceased its participation in the program.

**“Conrad 20” Program for States.** In 1994, Congress established a J-1 visa waiver provision commonly referred to as the “Conrad 20” program after its sponsor Senator Kent Conrad. Under this program, participating states were allowed to sponsor up to 20 waiver applications annually.

In 2001, 45 states and the District of Columbia participated in “Conrad 20” programs. Of the states participating in “Conrad 20” programs at the time, 22 sponsored specialists in addition to primary care physicians.<sup>11</sup> Administration of the program varied by state, with three states charging application fees and one state requiring a commitment of at least four years. In addition to meeting the general requirements for medical licensing in the United States, participants were also required to meet state-specified licensing criteria before beginning work.

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<sup>9</sup> USDA, *USDA Participation in J-1 Visa Waiver Program*, at [<http://www.usda.gov/news/releases/2002/03/fsj1visa.htm>].

<sup>10</sup> USDA pending waiver applications by state: Alabama, Arizona, Arkansas, California, Colorado, Florida, Georgia, Idaho, Illinois, Kansas, Kentucky, Louisiana, Maryland, Michigan, Missouri, Nevada, New Mexico, New York, North Carolina, Ohio, Oklahoma, Oregon, South Carolina, Tennessee, and Texas. Information furnished by USDA.

<sup>11</sup> States sponsoring specialists are: Alaska, Arizona, Delaware, Florida, Iowa, Massachusetts, Mississippi, Missouri, Nebraska, New Hampshire, New Jersey, New Mexico, New York, North Carolina, North Dakota, Pennsylvania, South Carolina, Texas, Utah, Vermont, Washington, and West Virginia. List compiled from information found in C. Berry, A. Doop, and B. Caro-Justin. *J-1 Visa Waivers: Program Update and “Next Steps.” 2001 Primary Care Symposium, Bethesda, MD* (hereafter cited as Berry, Doop, and Caro-Justin, *J-1 Visa Waivers*).



## Recent Developments

**HHS Policy Change.** On December 17, 2002, HHS announced it would be broadening its J-1 waiver program. HHS would assume the former role of USDA by acting as an IGA sponsor for waivers for primary care physicians and psychiatrists. These physicians would be required to practice in designated shortage areas for a minimum of three years in return for HHS sponsorship. Eligibility to apply for HHS waiver requests is limited to primary care physicians and general psychiatrists who have completed their primary care or psychiatric residency training programs no more than 12 months prior to the commencement of employment.<sup>12</sup> This eligibility limitation was instituted to ensure that the physicians' training is current and that they are not engaged in sub-specialty care.

Under the new program, HHS also allows physicians who have departed from the United States to apply for waivers while abroad. This must be done within the 12-month period following the completion of their residency training program. Other requirements include the following: a statement from the applicant that he or she does not have pending and will not submit other IGA requests while HHS processes the waiver request; the head of the petitioning facility must confirm that the facility is located in a designated shortage area; and the employment contract must require the physician to practice a specific primary care discipline for a minimum of three years for 40 hours a week.<sup>13</sup>

On June 12, 2003, HHS began accepting applications for J-1 waivers, for primary care physicians to practice in Health Professional Shortage Areas (HPSA) or Medically Underserved Areas (MUA).<sup>14</sup> However, on December 10, 2003, HHS issued more restrictive guidelines, requiring physicians to work in either Federally Qualified Health Centers, Rural Health Clinics or Indian Health Service Clinics. In addition to these requirements, the clinics had to be in areas with HPSA scores of 14 or above.

According to many states, this new policy drastically reduced the number of communities that qualified for J-1 physicians. Texas reported that under these new guidelines, the number of whole or partial counties that once qualified for J-1 physicians was reduced from 225 to 30. Other states that were adversely impacted include Iowa, which dropped from 82 previously eligible counties to 2, Wyoming, which dropped from 21 to 4, Kansas, which dropped from 97 to 15, and Florida,

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<sup>12</sup> U.S. Department of Health and Human Services, "HHS Exchange Visitor Program, Interim Final Rule," *Federal Register*, vol. 67, no. 244, Dec. 19, 2002, p. 77692.

<sup>13</sup> *Ibid.*

<sup>14</sup> U.S. Department of Health and Human Services, "HHS Exchange Visitor Program, Applications, Notice of Availability of Applications," *Federal Register*, vol. 68, no. 113, June 12, 2003, p. 35226. For more information on Health Professional Shortage Areas (HPSA), see [<http://bhpr.hrsa.gov/shortage>]. For more information on Medically Underserved Areas (MUAs), see [<http://bphc.hrsa.gov/databases/newmua>].

which dropped from 63 to 30.<sup>15</sup> Bills introduced in the 108<sup>th</sup> Congress have focused on this issue and have included language that would allow states to place up to five physicians in facilities that may not be in HHS-designated shortage areas if they are serving patients from designated shortage areas. These bills also allow states to recruit speciality care physicians if they can demonstrate a shortage of healthcare professionals to provide services in the requested medical specialty.

**Delta Regional Authority.** On May 17, 2004, the Delta Regional Authority (DRA) officially began accepting applications for its new J-1 visa waiver program. The DRA includes 240 county or parish areas in Alabama, Arkansas, Illinois, Kentucky, Louisiana, Mississippi, Missouri and Tennessee. The goal of the Authority is to stimulate economic development and foster partnerships that will have a positive impact on the economy of the eight states that make up the Authority. Under the DRA's waiver program, physicians must submit an application processing fee; agree to practice in designated shortage areas for a period of at least three years; and sign an agreement agreeing to pay \$250,000 to the sponsoring facility if they do not fulfill any portion of their commitment, or \$6,945 per month for each month they fail to fulfill their requirement.

**Expiration of "Conrad 30" Program.** On May 31, 2004, the "Conrad 30" provisions in the INA expired. The expiration of this program means that state-sponsored waivers can only be granted to J-1 physicians who were admitted to the United States, or who had acquired J-1 status, prior to June 1, 2004.<sup>16</sup> The expiration of these J-1 waiver provisions, along with the changes in HHS's program have many in rural medical communities concerned. Many states continue to argue that the J-1 waiver program is the only way their communities can recruit physicians, because many U.S. medical graduates uninterested in working in these areas.<sup>17</sup> As discussed below, several bills have been introduced in the 108<sup>th</sup> Congress to address the concerns of medically underserved areas that rely on J-1 physicians.

**State Surveys.** In May 2001, the Texas Primary Care Office of the Department of Health conducted a nationwide survey of state health departments utilizing J-1 waiver programs.<sup>18</sup> The survey posed specific questions regarding the administration of the programs in the states and asked for recommendations on the programs. The responses indicated that many of the states with "Conrad 20" programs also requested waivers through USDA and ARC, and that those without "Conrad 20" programs utilized the USDA waiver program.

<sup>15</sup> Other states that were significantly impacted are Delaware, Massachusetts, Michigan, Mississippi, New York, North Dakota, Washington, West Virginia, and Wisconsin.

<sup>16</sup> 8 C.F.R. § 212.7 (9)(i)(A).

<sup>17</sup> Sen. Kent Conrad, "Waiver of foreign residency requirement with respect to international medical graduates," remarks in the Senate, *Congressional Record*, vol. 142, Apr. 18, 1996, p. 8106; and Jeremy Olson, "Reliance on Foreign Doctors Faces Test: Security Concerns since Sept. 11 Have Called into Question Sponsorship Programs That Rural Hospitals Have Come to Rely On," *Omaha World-Herald*, Apr. 9, 2002, p. 1A.

<sup>18</sup> Berry, Doop, and Caro-Justin, *J-1 Visa Waivers*.

Recommendations from the states for the J-1 visa waiver program included the following:

- allow states to determine the appropriate use of the program;
- allow states to determine the number of waivers needed based on the needs of the states;
- allow fees to support the program;
- have HHS coordinate ongoing support and technical assistance; and
- have the Department of State and USCIS provide information and technical assistance to the states.

Other suggestions included allowing states to share unused waivers, having more interaction with USDA, and having an annual conference involving both federal and state agencies.

When USDA announced it would no longer participate in the J-1 waiver program in February 2002, the Texas Primary Care Office conducted a second survey, on the impact of the agency's withdrawal on states and their use of "Conrad 20." The survey also solicited further recommendations for the program.<sup>19</sup> Of the 49 states that responded, 26 indicated that their states would be impacted by USDA's decision. Of the 23 states reporting no impact, 17 placed less than 20 physicians annually through "Conrad 20," or had no involvement with USDA. In the survey 25 states indicated they could place more than 20 physicians, with seven implying they could place more than 51 physicians.<sup>20</sup> Several states indicated that they may have to use all 20 available positions, but that termination of the USDA program would not change their programs.

In July 2003, the Texas Department of Health conducted a review of the "Conrad" programs from 2000-2003<sup>21</sup> as well as a survey on the effects of HHS's policy change on the states.<sup>22</sup> The review showed that 49 states and the District of Columbia had some sort of "Conrad" program in 2003. Idaho was the only state without a program, but was in process of developing one. The review also showed that over the four-year period, the "Conrad" programs had requested a total of 2,949 waivers, with 758 of those being for sub-specialists. Recommendations for sub-specialists increased from 14% of all waiver requests in 2000 to 33.5% in 2003. It should be noted that the "Conrad" programs are the only J-1 visas waiver programs, other than the VA that recommend non-primary care physicians. Currently, only six

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<sup>19</sup> C. Berry, *Impact of USDA Withdrawal from the J-1 Visa Waiver Program* (Texas Department of State Health Services, Mar. 22, 2002), at [<http://www.dshs.state.tx.us/chpr/impact.shtm>].

<sup>20</sup> The states implying that they could place more than 20 physicians were Arizona, Arkansas, Connecticut, Delaware, Florida, Georgia, Illinois, Indiana, Iowa, Kansas, Kentucky, Maryland, Massachusetts, Michigan, Mississippi, Missouri, Nevada, New Mexico, New York, Rhode Island, Tennessee, Texas, Utah, Virginia, and Wisconsin.

<sup>21</sup> Texas Department of Health, Texas Primary Care Office, *J-1 Visa Waiver Review Conrad 30 from 2000-2003*, prepared Jan. 2004.

<sup>22</sup> C. Berry, *Impact of Changes in the DHHS Clinical Waiver Program for Texas*, prepared Jan. 21, 2004.

states with “Conrad” programs limit their recommendations to primary care physicians.

The 2003 survey found that of the 45 states that were participating in the program in 2001 and 2002, 22 states had filled all of their 20 slots, and 21 states had requested the additional 10 slots made available in early 2003. These additional slots were counted as part of the 2002 totals. In 2003, 18 states filled all of their slots, and 15 of the states responded that they could fill anywhere from 5 to 50 additional slots.<sup>23</sup>

When asked to suggest changes to the program, states continued to express an interest in: the re-distribution of unused slots; possibly increasing the number of waivers available to states to 40; making the program permanent; and allowing the state departments of health or program administrators decide where the physicians would be placed.

## Legislation in the 108<sup>th</sup> Congress

Several bills have been introduced to address the May 2004 expiration of the “Conrad 30” program. The companion bills H.R. 4156/S. 2302, introduced by Representative Jerry Moran and Senator Kent Conrad would extend the “Conrad 30” program until 2009; allow state public health departments to identify shortage areas; and make physicians who obtain waivers from the states exempt from the H-1B numerical limit. Both bills were referred to their respective Judiciary committees in April 2004. On October 11, 2004, the amended version of S. 2302 passed the Senate. The amended bill extends the program until June 1, 2006; exempts waiver recipients from the H-1B cap; allows recruiting of primary and speciality care physicians; and allows placement of up to five physicians in shortage areas designated by the states.

H.R. 4453 was introduced by Representative Jerry Moran on May 4, 2004. The bill as originally introduced would have extended the program for one year and exempted waiver recipients from the H-1B cap. It passed the House Judiciary Subcommittee on Immigration, Border Security, and Claims on June 3, 2004, and was referred to the full Judiciary committee.

On September 30, 2004, Representatives Sheila Jackson-Lee and John Hostettler offered an amendment in the nature of a substitute to H.R. 4453. The new bill would extend the program until June 1, 2006; allow states to recruit specialist as well as primary care physicians; exempt waiver recipients from the H-1B cap; and allow the placement of five physicians in state-designated shortage areas.

Historically, some have argued that the J-1 visa waiver program should be made permanent or extended for a number of years to allow an investigation into the use of foreign physicians to meet healthcare shortages and their impact on American

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<sup>23</sup> The states indicating they could fill additional slots were Arizona, Arkansas, California, Delaware, Florida, Iowa, Kentucky, Massachusetts, Michigan, Minnesota, New Mexico, New York, Ohio, Texas, and Washington.

physicians. During the committee markup of H.R. 4453, it was expressed that the purpose of the two-year extension was to allow the subcommittee time to look into this matter, as well as receive input from HHS regarding the placement of physicians outside of HHS-designated physician shortage areas.<sup>24</sup> The compromise on this issue was to allow each state to place 5 of their 30 physicians allowed under the Conrad program in shortage areas determined by the state before making it a permanent provision of the program.

On October 6, 2004, H.R. 4453 was debated on the House floor. Several members, including Representatives Sensenbrenner and Moran, urged passage of the bill, citing the program's success in serving underserved populations in their states. The bill passed the House and was referred to the Senate on October 6, 2004. No further action has taken place.

On November 17, 2004, S. 2302 was debated and passed by the House. When originally introduced by Senator Kent Conrad on April 7, 2004, the bill would have extended the "Conrad 30" program through June 1, 2009; exempted waiver recipients from the H-1B numerical limit; allowed states to recruit primary and specialty care physicians; and place up to five physicians in shortage areas determined by the states. In a bipartisan compromise, the Senate-passed version of S. 2302 would extend the program expiration date to June 1, 2006; exempt recipients from the H-1B numerical limit; allow states to recruit primary as well as specialty care physicians; and allow the placement of up to five physicians in areas that serve populations from HHS designated shortage areas without regard to the facility's location. S. 2302 was presented to the White House on November 22, 2004; and signed into law on December 3, 2004.<sup>25</sup>

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<sup>24</sup> U.S. Congress, House Committee on the Judiciary, *To Improve Access to Physicians in Medically Underserved Areas: Report to Accompany H.R. 4453*, 108<sup>th</sup> Cong., 2<sup>nd</sup> session, H.Rept. 108-730 (Washington: GPO, 2004), p. 11.

<sup>25</sup> P.L. 108-441.

## Appendix A: Legislative History of FMG Provisions

During the life of the J-1 program, there have been several changes to the home residency requirement and the rules regarding the adjustment of status of J-1 participants. When the cultural exchange program was originally established in 1948 by the Smith-Mundt Act, exchange visitors entered the country as “B” nonimmigrant visitors for business. The program required the participants to return to their home country or country of last residence upon completing their education and training, did not allow participants to apply for a change of status, and did not provide for waivers.<sup>26</sup> To get around these restrictions, many participants would leave the country only to quickly return to the United States under another nonimmigrant visa or as an immigrant. To address these concerns, Congress amended the Smith-Mundt Act in 1956.<sup>27</sup>

The 1956 amendments prohibited participants from applying for H nonimmigrant or immigrant status until it had been established that the alien had been present in a cooperating country or countries for at least two years. The amendments also added a provision for waiving the residency requirement when an interested government agency (IGA) and the Secretary of State requested it in the public interest.

In 1961, the Mutual Education and Cultural Exchange Act established the J-1 exchange program as we now know it and further amended the foreign residency requirement of the program.<sup>28</sup> It prevented participants from applying for legal permanent resident (LPR) or H nonimmigrant status until they had resided and been physically present in their home country, their country of last residence, or another foreign country for at least two years. The act also added the provision for waivers to be granted in cases of extreme hardship to a U.S. citizen or LPR spouse or child.

In 1970, Congress amended the INA and limited the two-year residency requirement to those J-1 visitors whose participation was financed by their home country, the United States, or an international organization of which the United States was a member, or whose skills were determined to be lacking in their home country.<sup>29</sup> The 1970 Act further amended the INA to allow waivers for those J-1s who feared persecution in their home countries based on race, religion, or political opinion, or in cases where it was found to be in the public interest that the alien remain in the United States.

In 1976 Congress imposed restrictions on FMGs in the J-1 program, stating that there was no longer a shortage of physicians in the United States and that there was

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<sup>26</sup> United States Information and Educational Exchange Act of 1948 (Smith-Mundt Act), P.L. 80-402; 62 Stat. 6.

<sup>27</sup> P.L. 84-555; 70 Stat. 241.

<sup>28</sup> Mutual Educational and Cultural Exchange Act of 1961 (Fulbright-Hayes Act), P.L. 87-256; 75 Stat. 527.

<sup>29</sup> P.L. 91-225; 84 Stat. 116.

no longer any need to afford admission preference under the INA.<sup>30</sup> FMGs were made subject to the two-year home residency requirement regardless of who financed their program, their initial J-1 length of stay in the United States was limited to a maximum of three years, and they were ineligible to receive waivers based solely on “no objection” statements from their home country. They were required to make a commitment to return home upon completing training, and the home country was required to provide written assurance that FMGs would return after completing training and would be put in positions to fully use the skills acquired during their training.<sup>31</sup>

In an effort to encourage physicians to study in the United States instead of Communist countries, the Department of State requested that Congress extend the three-year limit to seven years for FMGs.<sup>32</sup> Congress responded to the State Department request in the Immigration and Nationality Act Amendments of 1981.<sup>33</sup> While extending the stay for FMGs, this law also required FMGs to provide affidavits annually to INS attesting that they would return home upon completing their programs, and required U.S. officials to submit annual reports on the status of FMGs who submitted affidavits.

In 1994, Congress passed the Immigration and Nationality Technical Corrections Act, which established a new program that allowed interested states to act as IGAs on behalf of J-1 physicians.<sup>34</sup> This program allowed each state to request waivers for up to 20 physicians annually. Commonly referred to as the “Conrad 20” program after its sponsor Senator Kent Conrad, it was originally slated to end on June 1, 1996. The Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) extended the “Conrad 20” program until June 1, 2002.<sup>35</sup>

On May 31, 2002, the “Conrad 20” program authorization expired. In an effort to assure continued services to medically underserved areas, the program was once again extended by the 21<sup>st</sup> Century Department of Justice Appropriations Authorization Act.<sup>36</sup> This law not only extended the date of the program to May 31, 2004, it also expanded the program to allow each state 30 waivers and enacted the law retroactively to May 31, 2002. This latest extension of the program expired on May 31, 2004.

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<sup>30</sup> Health Professionals Education Assistance Act of 1976, P.L. 94-484; 90 Stat. 2243.

<sup>31</sup> Ibid.

<sup>32</sup> See General Accounting Office, *Foreign Physicians: Exchange Visitor Program Becoming Major Route to Practicing in U.S. Underserved Areas* (GAO/HEHS-97-26, Dec. 30, 1996).

<sup>33</sup> P.L. 97-116; 95 Stat. 1611.

<sup>34</sup> Immigration and Nationality Technical Corrections Act of 1994, P.L. 103-416; 108 Stat. 4305, § 220.

<sup>35</sup> Illegal Immigration Reform and Immigrant Responsibility Act of 1996, P.L. 104-208, Division C, § 622; 110 Stat. 3009-695.

<sup>36</sup> 21<sup>st</sup> Century Department of Justice Appropriations Authorization Act, P.L. 107-273; 116 Stat. 1758, § 11018.

On December 3, 2004, the “Conrad 30” program was once again extended. The new law extends the program until June 1, 2006 and includes provisions allowing states to recruit primary and specialty care physicians; exempting waiver recipients from the H-1B numerical limits; and allowing states to place up to five physicians in areas that serve populations from HHS-designated shortage areas without regard to the facility’s location. During the program’s two-year extension, Congress plans to investigate the physician shortage and the use of the “Conrad” program



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