



CRS Report for Congress

Foreign Medical Graduates: A Brief Overview of the J-1 Visa Waiver Program

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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.

To qualify for a waiver, a request must be submitted on behalf of the FMG, by an Interested Government Agency (IGA), or a state Department of Health. In exchange, the FMG must agree to work in a designated healthcare professional shortage area for a minimum of three years. The ability of states to request a waiver is known as the “Conrad State Program,” and was added temporarily to the Immigration and Nationality Act (INA) in 1994. The “Conrad State Program” has been extended by the past several Congresses. Most recently, Congress forwarded legislation the President that would extend the program through 2009. This report will be updated as warranted by legislative developments.

Background

International medical graduates (IMGs) are foreign nationals or U.S. citizens who graduate from a medical school outside of the United States. In 2007, the most recent year for which data are available, there were 902,053 practicing physicians in the United States, and IMGs accounted for 25.3% (228,665) of these.¹ The use of foreign IMGs in many rural communities of the United States has allowed states to ensure the availability of medical care to their residents.

¹ American Medical Association, *International Medical Graduates in the U.S. Workforce*, A Discussion Paper, October 2007.

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. While there are other ways for FMGs to enter the United States, including other temporary visa programs as well as permanent immigration avenues, this report focuses on FMGs entering through the J-1 program.²

Waiver Request Process

As exchange visitors, FMGs can remain in the United States on a J-1 visa until the completion of their training, typically for a maximum of seven years. After that time, they are required to return home country 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) or state department of health;
- 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.

Most J-1 waiver requests are submitted by an IGA and forwarded to the Department of State (DOS) for a recommendation. If DOS recommends the waiver, it is forwarded to U.S. Citizenship and Immigration Services (USCIS) in the Department of Homeland Security (DHS) for final approval.³ Upon final approval by USCIS, the physician's status is converted to that of an H-1B professional specialty worker. Prior to 2004, J-1 waiver recipients were counted against the annual H-1B cap of 65,000.⁴

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 the government of 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

² For further information on options available for temporary or permanent admission to the United States, see CRS Report RS20916, *Immigration and Naturalization Fundamentals*, by Ruth E. Wasem.

³ 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 final authority to determine if the exchange visitor is subject to the home residency requirement and to approve the waiver.

⁴ In instances where the H-1B cap has been met, the physician's J visa status was extended, and the physician was granted H-1B status in the following fiscal year. For further information on H-1B visas, see CRS Report RL30498, *Immigration: Legislative Issues on Nonimmigrant Professional Specialty (H-1B) Workers*, by Ruth E. Wasem.

three years.⁵ According to USCIS regulations, the FMG must be in status while completing the required 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).⁶ Under the “Conrad Program” discussed below, state health departments may also act as IGAs.

Department of Health and Human Services (HHS). HHS had begun accepting waivers to primary care physicians only relatively recently. Historically, HHS had been very restrictive in its 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.⁷ 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.⁸ 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, and reinstated their program.

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 will submit 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

⁵ For more information on Health Professional Shortage Areas (HPSA), see [<http://bhpr.hrsa.gov/shortage>]. This site also provides information on the Proposed Rule concerning shortage area designations.

⁶ 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.

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

⁸ U.S. Department of Health and Human Services, “HHS Exchange Visitor Program, Interim Final Rule,” *Federal Register*, vol. 67, no. 244, December 19, 2002, p. 77692.

also prove that it has made a good faith effort to recruit a U.S. physician in the six months preceding the waiver application. 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.

Delta Regional Authority (DRA). On May 17, 2004, the 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 DRA designated shortage areas for a period of at least three years; and agree 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.

Conrad State Programs. In 1994, Senator Kent Conrad sponsored the provision establishing the J-1 visa waiver program at the state level. The program is commonly referred to as the "Conrad State Program" program after him.⁹ Under the original program, participating states were allowed to sponsor up to 20 waiver applications for primary care physicians annually. To date, this provision has been extended several times. In 1996, the program was extended until 2002.¹⁰ Once again in 2002, the program was extended until 2004 and the number of waivers allowed per state was increased to 30.¹¹

In 2004, Congress extended the Conrad program until June 1, 2006, and expanded the program to allow states to recruit primary care and specialty physicians.¹² Other provisions of the law exempted waiver recipients from the H-1B annual cap, and allowed the states to place up to five physicians in facilities that serve patients living in designated shortage areas without regard to the facility's location. Previously, physicians could only serve in facilities located in designated shortage areas. In 2007, the program was extended through June 1, 2008.¹³

The waiver process for states is the same as other IGAs, however administration of the program varies by state. FMGs who are sponsored for a J-1 visa waiver by a state

⁹ Immigration and Nationality Technical Corrections Act of 1994, P.L. 103-416; 108 Stat. 4305, §220.

¹⁰ Illegal Immigration Reform and Immigrant Responsibility Act of 1996, P.L. 104-208, division C, §622; 110 Stat 3009.

¹¹ 21st Century Department of Justice Appropriations Authorization Act, P.L. 107-273; 116 Stat. 1758, §11018.

¹² To Improve Access to Physicians in Medically Underserved Areas; P.L. 108-441; 118 Stat. 2630.

¹³ Physicians for Underserved Areas Act; P.L. 109-477; 120 Stat. 3572.

agree to practice medicine in designated shortage areas in the sponsoring state for a period of three to four years. FMGs working in these areas are not only required to meet the general requirements for medical licensing in the United States, but they are also required to meet state-specified licensing criteria. According to a 2006 Government Accountability Office (GAO) report on the J-1 program, states accounted for 90 percent of waiver requests, and had requested over 3,000 waivers between 2003 and 2005.¹⁴

Legislation Introduced in the 110th Congress

Several bills have been introduced in the 110th Congress that would extend or expand the Conrad Program. During the comprehensive immigration reform debate, several larger immigration bills (S. 330 and S. 1639) contained provisions that would make the Conrad program permanent. In addition, the Conrad State 30 Improvement Act (S. 2672/H.R. 5707) was introduced, and would provide incentives to physicians working in rural and medically underserved areas by making the program permanent and increasing the number of specialty slots from 5 to 10. To date, none of the above bills have passed.

On March 10, 2008, Representative Zoe Lofgren introduced H.R. 5571 to extend the Conrad program until June 1, 2013. This bill was reported favorably by the House Subcommittee on Immigration, Citizenship, Refugees, Border Security and International Law on March 12, 2008, and passed the House on May 21, 2008. On September 27, 2008, the Senate passed H.R. 5571 with an amendment extending the program's expiration date to March 6, 2009.

¹⁴ See General Accountability Office, *Data on Use of J-1 Visa Waivers Needs to Better Address Physician Shortages*, GAO-07-52, November 2006.