

J-1 WAIVER OPTIONS FOR INTERNATIONAL MEDICAL GRADUATES

FREDRIKSON'S HEALTHCARE IMMIGRATION SOLUTIONS TEAM

An International Medical Graduate (IMG) who undertakes clinical medical training in the United States in J-1 status is subject to a two-year foreign residency requirement once their J-1 program has been completed. Until the IMG has completed this foreign residency requirement, the IMG may not change into H-1B status or adjust to Lawful Permanent Residence (green card).

However, an IMG may apply for a waiver of the two-year foreign residency requirement. Such a waiver excuses the two-year foreign residency requirement and makes the IMG (or J-1 waiver physician) eligible to change into H-1B status as a cap-exempt employee and/or to immediately pursue Lawful Permanent Residence.

There are several categories of J-1 waivers available for IMGs. Note that “no objection” waivers are unavailable for IMG physicians. The basis for a physician waiver may be any of the following:

- A. **Hardship Waiver:** A *hardship waiver* is available to an IMG who can demonstrate exceptional hardship to a U.S. Citizen or Lawful Permanent Resident spouse or child – not the IMG individually. Examples of exceptional hardship include medical conditions, disabilities, and psychological issues. Mere separation is not sufficient to obtain a hardship waiver.
- B. **Persecution Waiver:** A physician may qualify for a *persecution waiver* if the IMG has a well-founded fear of persecution based on membership in a particular legal group (such as religious, ethnic, or political). This is similar although distinct from an asylum application.
- C. **Waivers by Interested Government Agency:** In addition to persecution and hardship waivers, an IMG may qualify for an *Interested Government Agency waiver* issued by either designated federal entities or state departments of health that are registered to recommend waivers as matters benefiting the “public interest.”
 1. **Federal Agencies:** As a practical matter, most J-1 waivers for IMGs are recommended by either the Department of Health and Human Services (HHS) or the Department of Veterans Affairs, and have served as IGAs for J-1 waivers for IMGs.

HHS can serve as an IGA in the following instances:

 - a) Research performed in an area of priority or significant interest to HHS; or
 - b) Clinical Care Waivers for IMGs who practice primary care or psychiatric care at a facility with an HPSA score of 7 or higher.
 2. **State Public Health Department or Its Equivalent (Conrad State 30 Program):** Numerically, this is the most popular of the J-1 waiver options available to IMGs. Each state has a designated entity responsible for administering its Conrad 30 Program and each state may establish its own J-1 Conrad 30 application procedures consistent with federal guidelines. As such, the requirements for each state will vary.

The common factors of all Conrad 30 waivers are:

 - a) Each state has an annual waiver quota of 30 waiver numbers – 10 of which can be used for placements in non-medically underserved areas (Flex waivers) and the balance of which are restricted to placements in areas that have been designated as medically underserved.
 - b) The IMG must commit to employment specifically in H-1B status for a three-year period providing direct clinical care in a medically underserved area/health professional shortage area as designated by the Health Resources and Services Administration (HRSA) or to provide care to patients coming from medically underserved areas. An IMG gains eligibility for permanent residence only upon fulfillment of this 3-year H-1B employment obligation.
 3. **Geographically-Limited Federal-State Partnerships:** Delta Doctors Program (Delta Regional Authority-DRA), Southeast Crescent Regional Commission (SCRC) and the Appalachian Regional Commission (ARC). These entities can serve as sponsors of J-1 waivers for IMGs who provide full-time and direct clinical care for a three-year period at worksites located within its geographic area of coverage.

Once any of these IGAs recommends the J-1 waiver for approval, the petition is forwarded to the U.S. Department of State (with a filing fee of \$120) and, upon its recommendation for approval, to U.S. Citizenship and Immigration Services for ultimate adjudication and issuance of the waiver (Form I-612 Approval Notice).

Interested Government Agency Waiver Programs	States/Areas that Qualify	Processing Times by IGA*	Minimal Requirements	Additional Cost (fees)
Conrad State 30 Program	All states get 30 Conrad waivers each fiscal year (starting Oct. 1). Priority for HPSA/MUA worksites, and up to 10 FLEX worksites serving patients from HPSA/MUA.	4-12 weeks (depending on the state)	Conrad State waivers are available for IMGs committing to work full-time for 3 years in a HPSA or MUA, and up to 10 of the 30 waivers can be allocated to IMGs employed at a worksite that is not a HPSA/MUA worksite but that serves patients residing in HPSA/MUA (i.e. FLEX waivers). https://travel.state.gov/content/travel/en/us-visas/study/exchange/waiver-of-the-exchange-visitor/designated-state-health-depts.html	Some states impose additional filing fees, but most states do not have a J-1 waiver filing fee.
Appalachian Regional Commission (ARC)	<ul style="list-style-type: none"> • Alabama • Georgia • Kentucky • Maryland • Mississippi • New York • North Carolina • Ohio • Pennsylvania • South Carolina • Tennessee • Virginia • West Virginia 	Varies by state and each state has individual contact and application	<p>IMG must agree to practice in primary medical care, psychiatry, or subspecialty full-time (at least 40 hours/week) for at least 3 years at a HPSA worksite in the Appalachian Region.</p> <p>The employer must show reasonable good faith efforts to recruit US doctor during the six months before waiver application. The employer must also have a sliding-fee scale.</p> <p>The employment contract may not contain a restrictive covenant or non-compete clause and must include a liquidated damages clause of \$250,000.</p> <p>https://www.arc.gov/j-1-visa-waivers/</p>	N/A
Delta Regional Authority (DRA)	<ul style="list-style-type: none"> • Alabama • Arkansas • Illinois • Kentucky • Louisiana • Mississippi • Missouri • Tennessee 	6 to 8 weeks	<p>IMG must agree to practice in primary medical care (general/family practice, internal medicine, pediatrics, OB/GYN, psychiatry) full-time (at least 40 hours/week or 160 hours/month) for at least 3 years at a HPSA worksite in the Delta Region. Specialists may be eligible if additional documentation is provided to demonstrate need for specialty in HPSA.</p> <p>The employer must show good faith effort to recruit US physicians for at least 45 days in the 12 months before waiver application.</p> <p>The employment contract may not contain a restrictive covenant or non-compete clause.</p> <p>https://dra.gov/initiatives/promoting-a-healthy-delta/delta-doctors-how-to-apply/</p>	\$3,000 application processing fee
Southeast Crescent Regional Commission (SCRC)	<ul style="list-style-type: none"> • Alabama • Florida • Georgia • Mississippi • North Carolina • South Carolina • Virginia 	Min 45 days. Additional \$3,000 fee for expedited review.	<p>IMG must agree to practice in primary medical care (general/family practice, internal medicine, pediatrics, OB/GYN, psychiatry) full-time (at least 40 hours/week or 160 hours/month) for at least 3 years at a HPSA worksite in the Southeast Crescent Regional Commission. Specialists may be eligible if additional documentation is provided to demonstrate need for specialty in HPSA.</p> <p>The employer must show good faith effort to recruit US physicians for at least 45 days in the 12 months before waiver application.</p> <p>The employment contract may not contain a restrictive covenant or non-compete clause.</p> <p>https://scrc.gov/wp-content/uploads/2022/07/Southeast-Crescent-Regional-Commission-J-1-Guidelines-1.pdf</p>	\$3,000 application processing fee

Interested Government Agency Waiver Programs	States/Areas that Qualify	Processing Times by IGA*	Minimal Requirements	Additional Cost (fees)
Health and Human Services (HHS)	Clinical Waiver (nationwide)	6-10 weeks (due to recent surge in applications)	<p>IMG must agree to 3 years of full-time (40 hours/week) employment providing primary care (family practice, internal medicine, general pediatrics, or OB/GYN) or general psychiatric services at a HPSA facility with a score of 7 or higher.</p> <p>Evidence of regional and national recruitment efforts.</p> <p>The IMG is Board certified/Board eligible in the 12 months before the date of commencement of employment under the contract.</p> <p>The employment contract may not contain a restrictive covenant or non-compete clause.</p> <p>https://www.hhs.gov/about/agencies/oga/about-oga/what-we-do/visitor-exchange-program/supplementary-b-clinical-care.html</p>	None
Health and Human Services (HHS)	Research Waiver (nationwide)	3+ years	<p>Research performed in an area of priority or significant national/international interest.</p> <p>Evidence of IMG's essential value to research program, probable future without IMG, and long-range plans for IMG.</p> <p>Evidence of at least 2 forms of recruitment within 18 months of waiver application.</p> <p>https://www.hhs.gov/about/agencies/oga/about-oga/what-we-do/visitor-exchange-program/supplementary-a-research.html</p>	None

**This does not take into account the processing time by DOS once it receives a recommendation by the IGA. For example, once an application is submitted to the DRA, it can take the DRA at least six to eight weeks to make its recommendation. It will take DOS at least another 4 to 6 weeks to forward its recommendation to the USCIS. USCIS may take another 4 to 8 weeks to issue an I-612 receipt and waiver approval notice.*

FREDRIKSON'S HEALTHCARE IMMIGRATION SOLUTIONS TEAM

Fredrikson's Healthcare Immigration Solutions Team (HIST) partners with healthcare employers, IMGs, and healthcare professionals to navigate the complex immigration systems affecting IMG employment. We work to expand the pool of physician candidates for healthcare employers, and we are committed to achieving the objectives of IMGs and healthcare professionals for stable immigration status and meaningful and challenging professional careers. Above all, we work diligently to demystify the immigration process, develop a true partnership among the stakeholders in our immigration cases, and earn the respect and trust of the clients we serve across the United States and globally. We offer clients a comprehensive experience with access to a team with decades of healthcare immigration law experience, fredlaw.com/immigration, and one of the nation's premier Health Law departments fredlaw.com/healthcare.



Loan T. Huynh
Department Chair
lhuynh@fredlaw.com
612.492.7165



Debra A. Schneider
Partner
dschneider@fredlaw.com
612.492.7214



Kayla C. Hoel
Attorney
khoel@fredlaw.com
612.492.7450



Matthew Webster
Attorney
mwebster@fredlaw.com
612.492.7234



Tel. 612.492.7000 / Fax 612.492.7077
USA / China / Mexico / fredlaw.com/immigration