

# Healthcare Immigration Prescriptions:

## Immigration Strategies for Physicians and Allied Health Staff in Clinical and Academic Healthcare Practices

September 28, 2023

**Fredrikson**

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# Agenda

Immigration as a Recruitment & Retention Tool

Overview of IMG Physician J-1 Waiver Programs

IMG Physician Retention & Permanent Residence

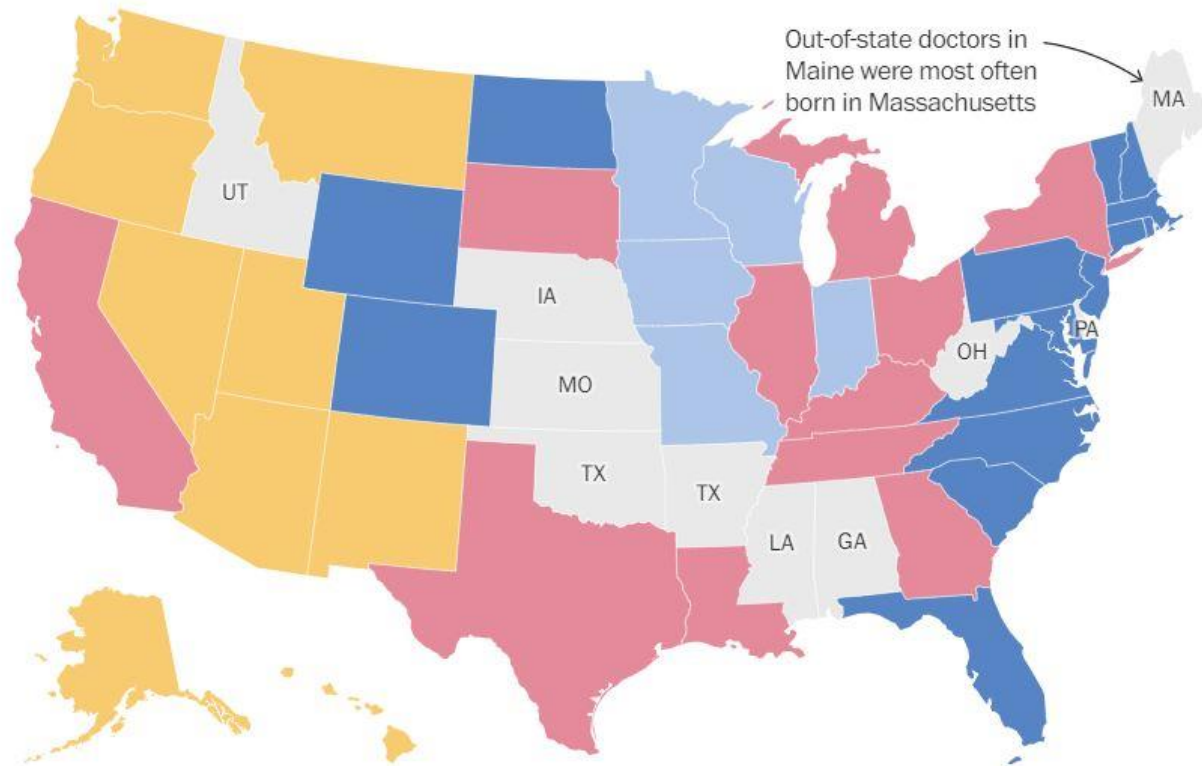
Nurses and Allied Healthcare Staff

# Immigration as Recruitment Tool

## Including India reshapes the doctor-origin map

Most common birthplace for out-of-state physicians, 2012-2021

■ New York ■ India ■ California ■ Illinois ■ Other (see label)



Note: Includes employed physicians ages 30 to 65

Source: Census Bureau's American Community Survey

DEPARTMENT OF DATA / THE WASHINGTON POST

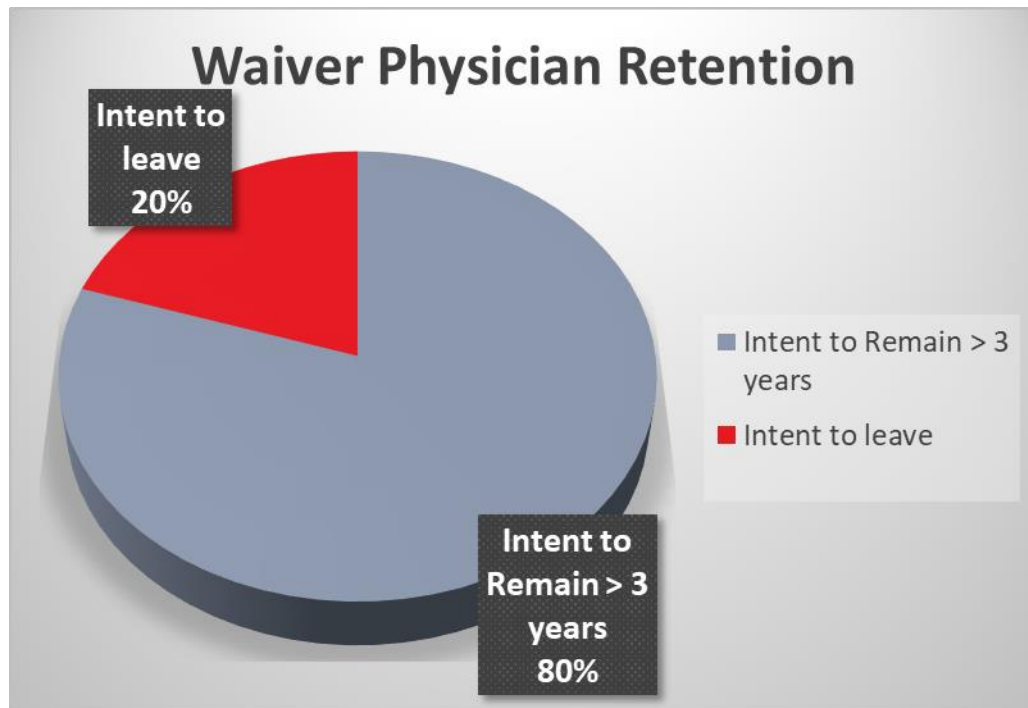
Van Dam, Andrew. "The states that produce the most doctors, artists and writers, and more," The Washington Post (Aug. 18, 2023), *available at:* <https://www.washingtonpost.com/business/2023/08/18/states-most-artists-writers/>

# Immigration as Recruitment Tool

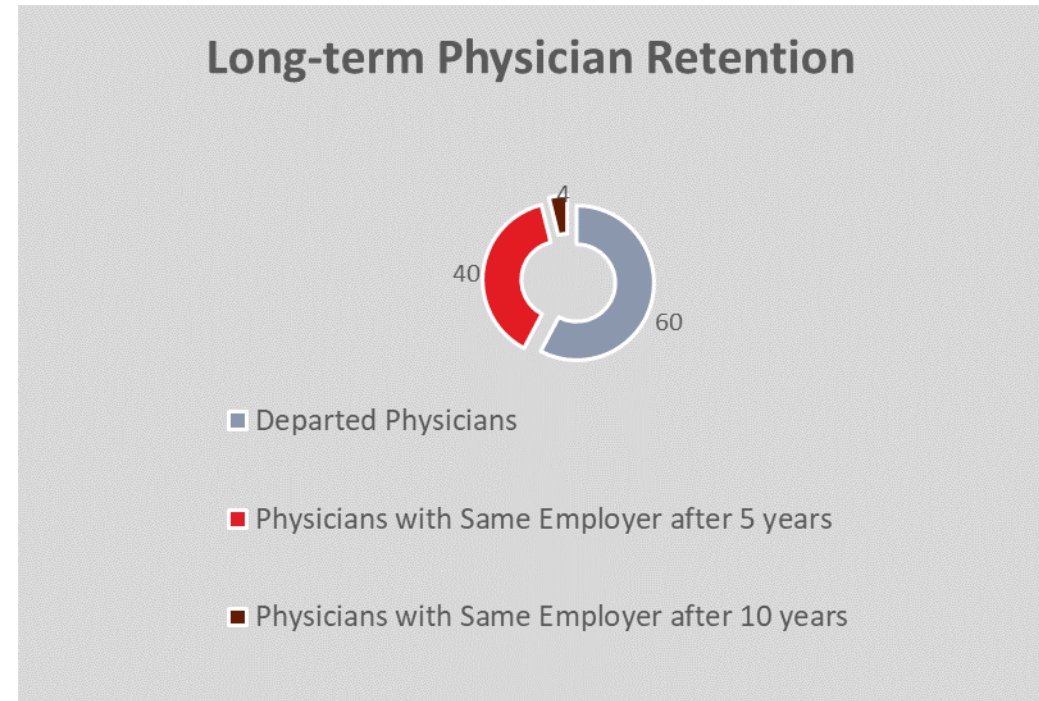
- Expand Pool of Physicians (1/4 IMGs)
- Incentives for Rural & Medically Underserved Placements (1000+ /year)
  - ***HHS processed 350 Clinical Waivers in FY2022, 450 in FY2023, and even more in FY2024***
- Elevated Professional Practice
- DEI & Culture Considerations
- Keystone to Competitive Recruitment

# Immigration as Recruitment Tool

## Retention >3 years



## Long-term Retention



<https://www.ruralhealthinfo.org/topics/j-1-visa-waiver>

# Immigration as Recruitment Tool

## Questions/Concerns

- Unfamiliarity with process/requirements
- Complexity/uncertainty
- Timing (esp. recruiting)
- Expense
- Short-term/Long-Term Retention
- Community Receptivity
- Spousal Concern/Isolation

## Benefits

- Legal counsel can assist with process/requirements, providing competitive advantage vis-à-vis other states/institutions
- Timing is earlier which enables “first round” draft picks
- Legal \$ < Ongoing Vacancy & Recruitment \$
- Retention prospects better for J-1 waiver physicians (term contract)
- Better clinical outcomes/wait times drives community receptivity
- Spousal support can drive retention/satisfaction

# Immigration as Recruitment Tool

- **BOTTOM LINE:** The J-1 Waiver is likely the #1 priority of an IMG physician looking to match, and family immigration and permanent residence are likely #2.





# Overview of IMG Physician J-1 Waiver Programs



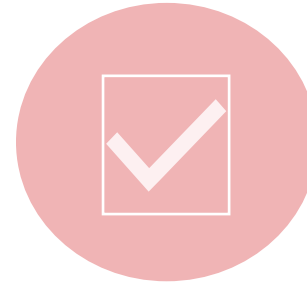
# Exchange Visitor Program: A Brief Primer



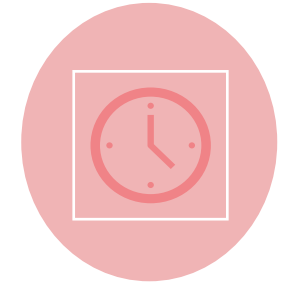
DEFINITION:  
J-1  
EXCHANGE  
VISITOR



WHY  
PHYSICIANS?



ECFMG &  
DEPARTMENT  
OF STATE



TIME &  
ACTIVITY  
LIMITATIONS

# Physicians – 2-Year Home Residence Obligation

- Blanket coverage to ALL J-1 clinical trainees
- Requires residence and physical presence in HOME COUNTRY
- Implications:
  - Ineligibility for an H-1B visa
  - Ineligibility for permanent residence
- Conversely: does not disqualify eligibility for other nonimmigrant visas (O-1, TN, etc.)

# Physicians - Options for J-1 Physician on Completing GME?



- #1 Return home for two years
- #2 Obtain a waiver of two-year home residence obligation
- #3 Qualify for alternative visa status other than H-1B

# Physicians - Bases for J-1 Waivers

- Exceptional hardship to USC relative
- Persecution
- Interested Government Agency (IGA) sponsorship
  - Conrad State 30 Program/State Department of Health
  - Delta Regional Authority/Appalachian Regional Commission
  - Department of Health and Human Services

*\*Release/no-objection statement from home country unavailable for IMG physicians\**

# What are the Federal Requirements for IGA Waivers?

Conrad Program Only - Limit of 30 waivers/fiscal year

- Medically underserved placements: up to 30
- FLEX waivers: 10

Full-time employment/ 40 hours clinical care in HPSA/MUA/MUP worksite

Need to agree to work in position within 90 days of waiver issuance

3-year H-1B employment obligation

# Conrad State 30 Waiver Program: What Is It?

- Allows state DOH to recommend up to 30 physicians/ year who will serve the public interest
- Public policy focus: expanding the safety net
- Federal-State partnership
  - Federal: creates basic structure
  - State:
    - *Fill in the blanks*
    - *Administer the program to meet needs of State*
    - *NOTE: Unless codified or subject to state regulations, State DOH has wide latitude to craft Conrad 30 program to meet **patient needs & maximize waiver usage***

# State Conrad Waiver Requirement Examples

- 📅 Special Application Periods
- 🩺 Primary Care vs. Specialty Care
- 🏠 Primary Care: Definition & Scope
- 💰 Relevance of Sliding Fee Scale
- ✓ Limitations on Underserved Designations
- 🤝 FLEX Policy
- ⊖ Non-Compete & Other Contract Language Requirements
- 📄 Departure Policies & Reporting Requirements
- Filing Fees?
- Additional forms/affidavits?
- Timing of program application/consideration/decision periods

- Only **24/50 states** filled all 30 Conrad slots.
- Only **19%** of Conrad 30 waiver slots were filled by Primary Care Physicians
- **77%** of Conrad 30 slots were for Specialists
- **70%** of Conrad 30 slots were for non-rural placements

FFY 2022 10/21 to 9/22								
State	Primary Care	Psych	Specialists	Rural	Non-Rural	Rural / Non-Rural Split	Flex 107	FY 22 Total
Alabama	0	1	24	1	24		5	25
Alaska	1	0	0	1	0		0	1
Arizona	8	1	21	14	15		6	30
Arkansas	7	0	23	20	10		10	30
California	17	5	6	No Data Available				28
Colorado	4	0	6	1	9		4	10
Connecticut	2	1	27	0	30		0	30
Delaware	3	3	21	24	3		9	27
Dist. Of Col	8	1	0	0	9		0	9
Florida	3	1	25	1	28		1	29
Georgia	1	0	29	0	13		0	30
Hawaii	3	2	8	1	12		10	13
Idaho	0	0	5	2	3		0	5
Illinois	7	1	22	5	25		1	30
Indiana	11	2	17	3	27		0	30
Iowa	6	1	23	4	25		2	30
Kansas	1	0	17	1	17		4	18
Kentucky	3	0	27	12	18		10	30
Louisiana	8	1	21	20	10		10	30
Maine	No Data Available							
Maryland	10	4	16	10	20		7	30
Massachusetts	4	1	21	5	20		6	26
Michigan	6	3	21	12	18		0	30
Minnesota	5	2	23	11	19		8	30
Mississippi	0	0	10	8	2		3	10
Missouri	2	0	28	2	28		0	30
Montana	No Data Available							
Nebraska	4	0	14	7	11		10	18
Nevada	2	0	13	0	15		1	15
New Hampshire	16	1	11	13	15		10	28
New Jersey	6	0	5	0	11		2	11
New Mexico	6	2	22	20	10		10	30
New York	1	1	28	2	28		0	30
North Carolina	2	1	15	6	12		8	18
North Dakota	1	1	8	0	10		10	10
Ohio	2	0	27	2	27		10	29
Oklahoma	0	1	29	9	21		10	30
Oregon	13	1	16	8	22		3	30
Pennsylvania	2	2	26	7	22	1	4	30
Puerto Rico	0	0	0	0	0		0	0
Rhode Island	6	1	23	0	30		10	30
South Carolina	1	0	23	3	21		7	24
South Dakota	3	0	9	0	12		9	12
Tennessee	1	0	29	13	17		2	30
Texas	6	2	22	1	25	3	0	30
Utah	1	1	3	0	5		3	5
Vermont	1	0	6	3	4		7	7
Virginia	8	2	22	10	20		0	30
Washington	5	2	18	6	19		0	25
West Virginia	4	0	24	6	22		1	28
Wisconsin	3	2	19	10	14		10	24
Wyoming	0	0	4	0	4		2	4
Totals	214	50	857	285	785	4	225	1,119
Filled all slots								24

<https://www.3rnet.org/j1-filled>





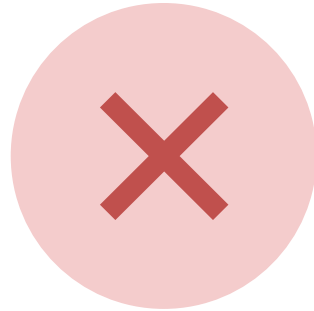
# Department of Health and Human Services Waivers

- Primary Care Only
  - Family practice, general pediatrics, obstetrics/gynecology, general internal medicine, or general psychiatry; and
  - Board certified or board eligible in primary care discipline in the last 12 months
- Previously FQHC; Now HPSA Score of 7 or Higher
- Endorsement from State Department of Health
- Sliding Fee Scale

# Delta Regional Authority (DRA) Waiver Program



LIMITED TO HPSA /  
MUA/MHPSA/MUP WITHIN  
DRA REGION



NO QUOTA

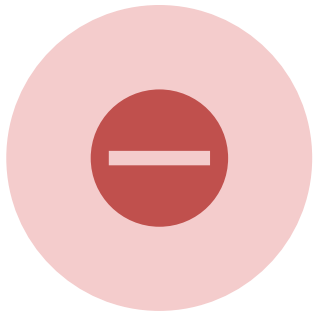


45-DAY MANDATORY  
RECRUITMENT WITHIN  
12 MONTHS OF SUBMISSION

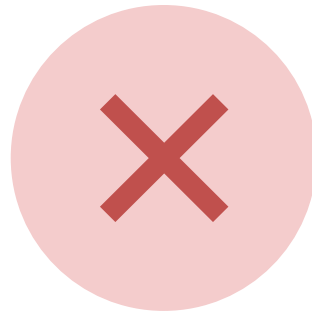


SPECIALTY & PRIMARY CARE  
PHYSICIANS

# Appalachian Regional Commission (ARC) Waiver Program



LIMITED TO HPSA / MUA  
WITHIN ARC REGION:



NO QUOTA

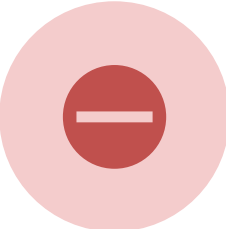


6-MONTH MANDATORY  
RECRUITMENT

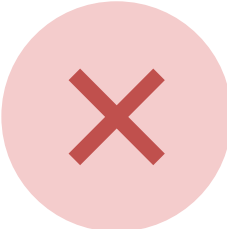


PRIMARY CARE,  
PSYCHIATRISTS, AND SUB-  
SPECIALTY PHYSICIANS

# Southeast Crescent Regional Commission (SCRC) Waiver Program



LIMITED TO HPSA /  
MUA WITHIN SCRC  
REGION



NO QUOTA



45-DAY MANDATORY  
RECRUITMENT



\$3000 APPLICATION  
FEE; \$3000 EXPEDITE  
FEE (45 DAYS)



PRIMARY CARE,  
PSYCHIATRISTS, AND  
SUB-SPECIALTY  
PHYSICIANS

# J-1 Waiver – Sticky Wickets

- Hospitalists
- Forensic pathologists
- Telehealth
  - J-1 Waiver Compliance
    - The INA & DHS/DOS regulations are silent on whether IMGs can satisfy waiver by providing telehealth services
    - During COVID-19 National Emergency, USCIS offered flexibility for J-1 waiver physicians to provide fulfill their J-1 waiver requirements by providing telehealth
    - This flexibility has ended, so the conservative approach is that telemedicine cannot satisfy the J-1 waiver requirement (*i.e.* generally 40 hours of direct patient care)
  - H-1B status
    - For H-1B purposes, telemedicine is acceptable
    - The conservative approach is to list both worksite and remote location(s) to meet prevailing wages

# Once Waiver Recommended by Agency

- Requires subsequent clearance by DOS and USCIS
- Timelines vary (generally 18-20+ weeks for waiver approval)
- Can file H-1B petition on DOS recommendation (preferable: USCIS I-612 receipt notice)
- 3-year H-1B employment obligation

# H-1B Process



- Nonimmigrant Visa Status
- 6-Year Limit
- Mandatory 3-Year H-1B Obligation
- Two-Step Process
  - Labor Condition Application
  - H-1B Petition



# Physicians – Options Instead of Clinical Waiver

Option for HHS  
Research  
Waiver

Canadian H-1B  
entry exception

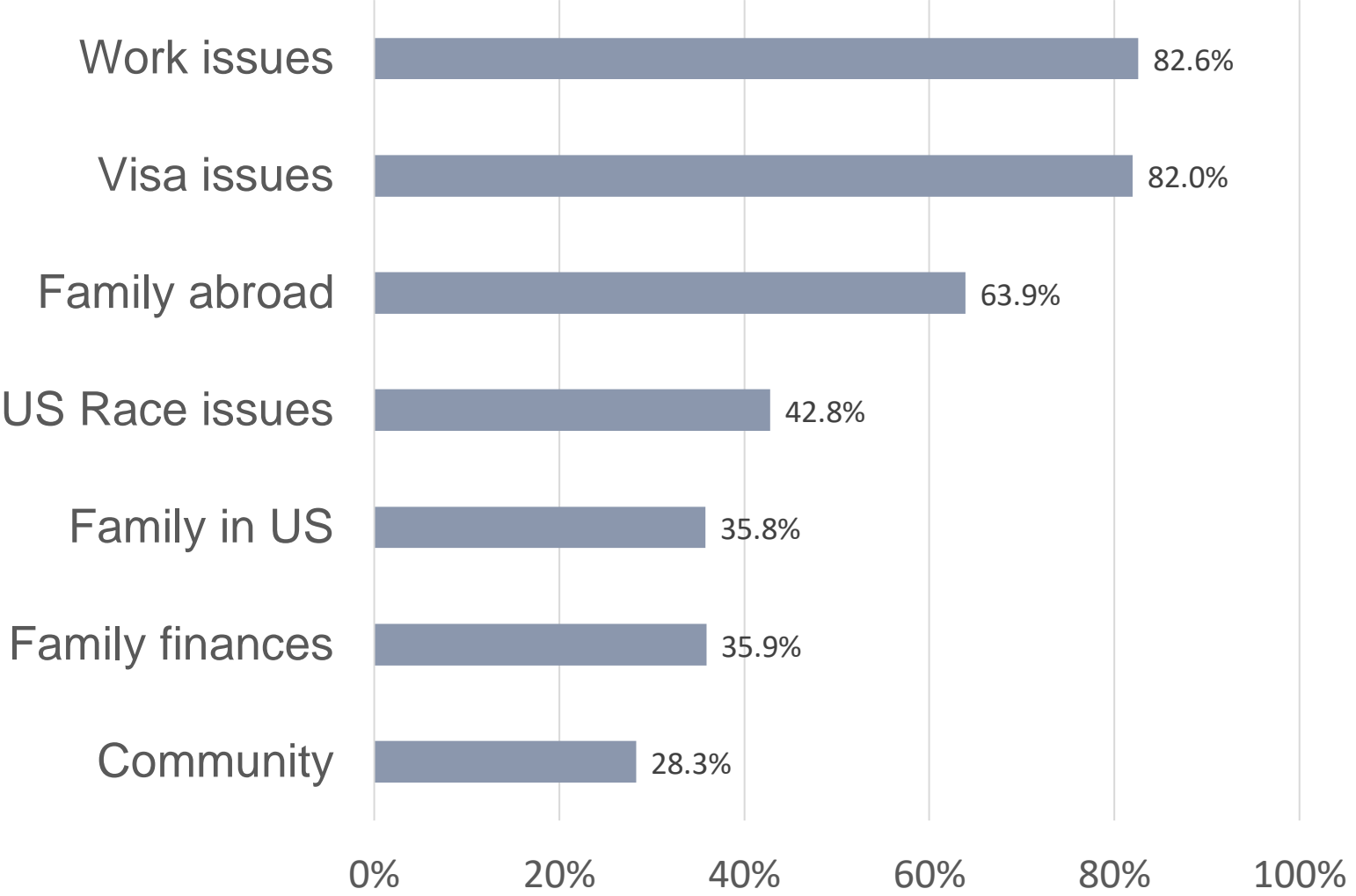
Other  
nonimmigrant visa  
options (O-1,  
F-1, TN, E-2)

Extend J-1, if  
possible

Spousal Option

Asylum/TPS

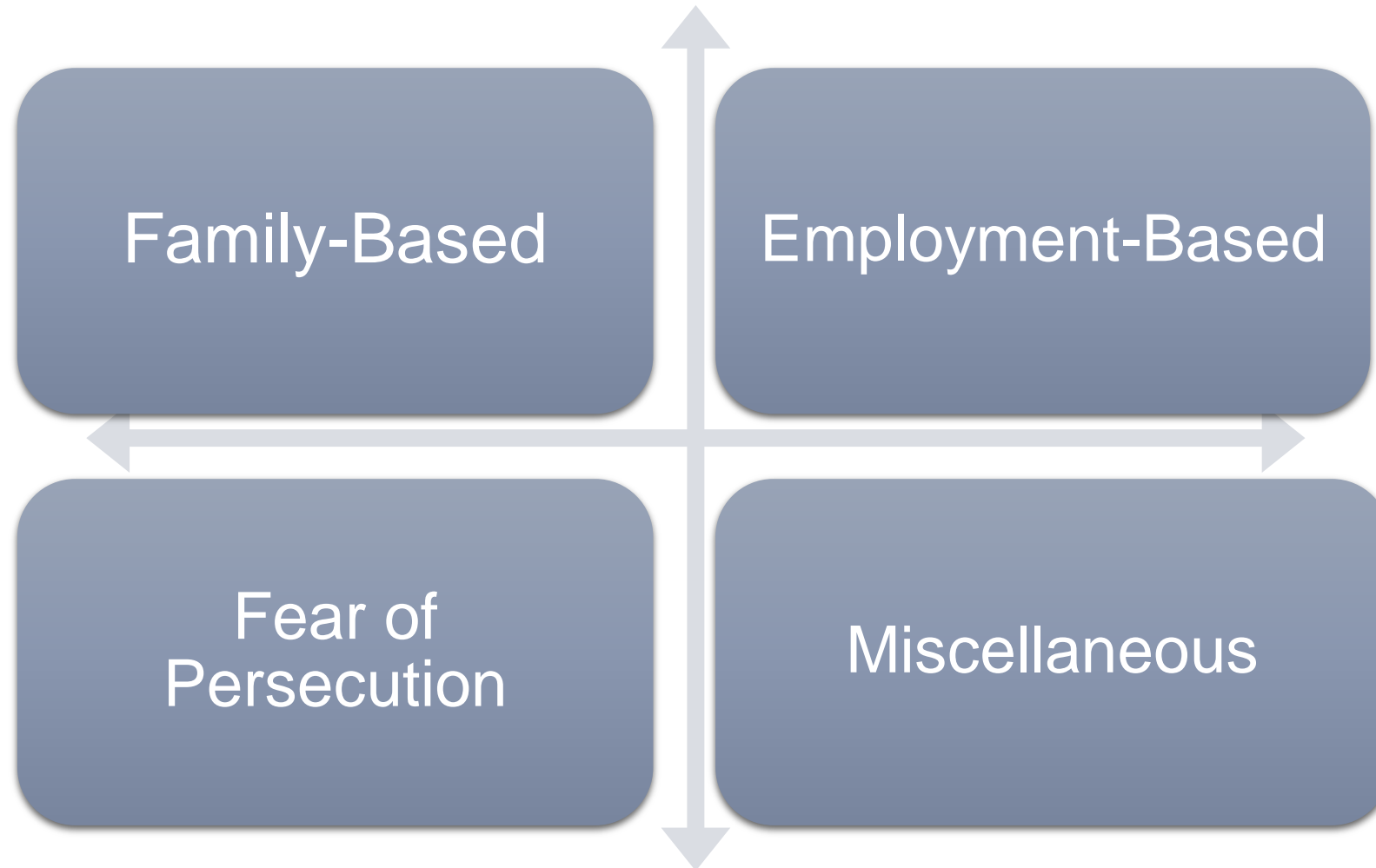
**Sources of stress:  
% respondents with moderate or severe stress from various sources**





# IMG Physician Retention & Permanent Residence

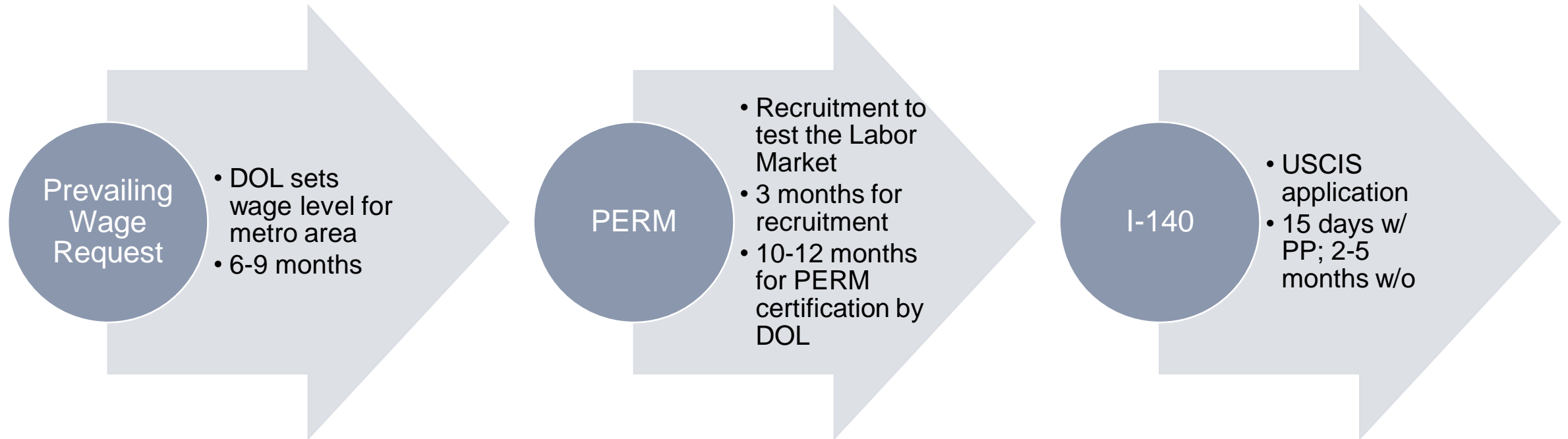
# Basic Strategy Options for Permanent Residence



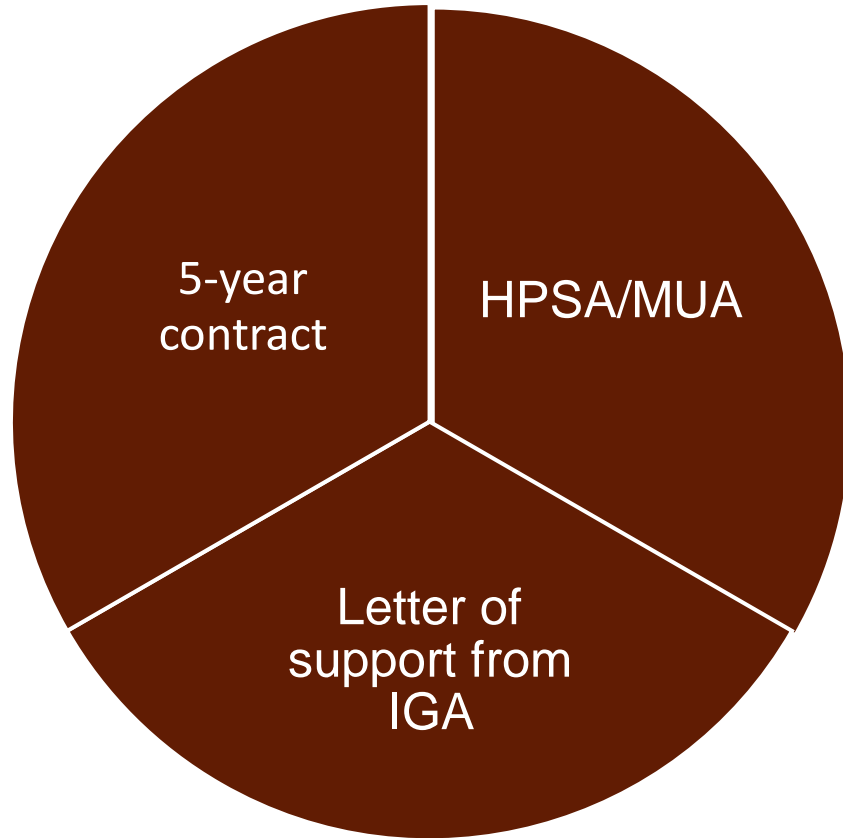
# Permanent Resident Options

1. PERM Labor Certification
2. Physician National Interest Waiver (PNIW)
3. EB-1
4. EB-2 NIW

# PERM Process



# Physician National Interest Waiver



- Permits early green card application (EAD/AP card)
- H-4 EAD Option
- Earlier priority date (essential for Indian and Chinese physicians)

# Extraordinary Ability/Outstanding Researcher or National Interest Waiver



- EB1 or EB2 filing option (faster track to a greencard)
- No recruitment required
- Focus is on excellence of the physician - usually research focused (publications, original research, awards, judging, leadership roles, high salary, internationally recognized)
- No PERM, file the I-140 directly by establishing the physician is performing in the US national interest, advancing their field of endeavor to a greater degree than others
- Discretionary decision by the agency





# **Nurses and Allied Healthcare Staff: Immigration, Recruitment, & Retention**

# Immigration for Nurses

## Issues

- Current State of Nurse Workforce
- Expanding role of nurses to address healthcare shortages

## Solutions

- Immigration Options
- Nurse Staffing Agencies

# H-1B “Specialty Occupation” Status for Nurses

- Certain Nursing Positions are eligible for H-1B

- *Advanced Practice Registered Nurse/APRN (Masters)*
- *NP (Masters)*
- *RN (Assoc./Bachelors)*
- *ADN (Associate degree)*
- *LPN (1 year)*
- *CNA*

## H-1B Restrictions:

- Specialty Occupation = Bachelor’s degree
- Consequence:
  - *Most RNs are ineligible for H-1B Status*
- Exceptions:
  - *Normal to industry (APRN/NP)*
  - *Special needs of employer*

# H-1B Submission for Nurse

Identification  
of “specialty  
occupation”

State  
licensure

VisaScreen

# Alternative Visa Status

- TN (Canada/Mexico only)
- F-1 OPT
- NOTE: VisaScreen is a mandatory, blanket requirement (even if U.S. nursing school graduate)

# “VisaScreen”: Section 343 Healthcare Worker Certificate

- Nurses (RN, LPN/LVN)
- Physical Therapists
- Occupational Therapists
- Medical Technologists
- Medical Technicians
- Audiologist
- Physician Assistants
- Speech-Language Pathologists

# Schedule A



“Schedule A” – list of fields with DOL-identified shortage

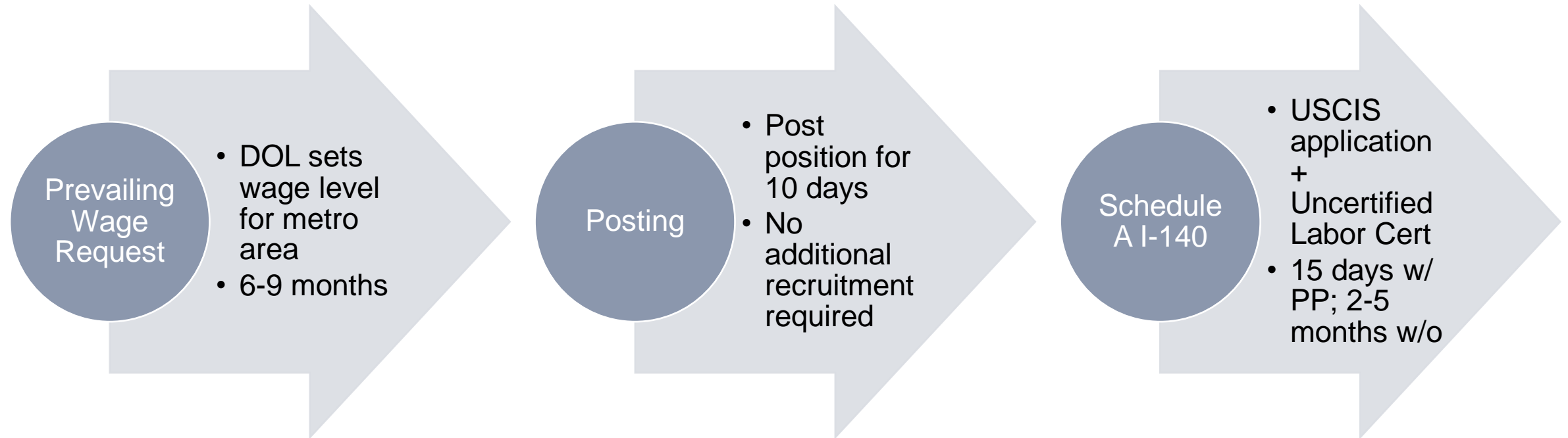


- No PERM recruitment required
- DOL has pre-certified that these positions are in short supply



- Physical Therapists: Must possess all qualifications required by state
- Professional Nurses: Full state nursing license OR CGFNS certificate OR passed NCLEX-RN

# Permanent Resident Process for Nurses





# Nurses – Permanent Residence Strategies

Employment-based	All Chargeability Areas Except Those Listed	CHINA-mainland born	INDIA	MEXICO	PHILIPPINES
1st	C	01AUG22	01JUL19	C	C
2nd	01JAN23	01JAN20	15MAY12	01JAN23	01JAN23
3rd	01FEB23	01SEP20	01AUG12	01FEB23	01JAN23
Other Workers	15DEC20	01JUN17	01AUG12	15DEC20	15MAY20
4th	01MAR19	01MAR19	01MAR19	01MAR19	01MAR19
Certain Religious Workers	01MAR19	01MAR19	01MAR19	01MAR19	01MAR19

- EB-3 vs. EB-2
- Backlogs
- Cross-chargeability

# Allied Health Professionals - Considerations

- VisaScreen vs. non-VisaScreen professions
- Licensure provisions
- H-1B option
- TN occupational categories
- Immigrant Visa options

# Allied Health Professionals – H-1B

- Cap subject or cap exempt?
  - Exempt = nonprofit affiliated with institution of higher education
  - If subject = register in annual lottery
- Bachelor's degree in a specific field required
  - Normal across industry
  - Employer normally requires
  - Due to specialized nature of specific role
- Candidate possesses the required degree
- Must pay the prevailing wage
- Six year maximum
  - Timing to begin immigrant visa – LPR sponsorship policy?

# Allied Health Professionals – TN (Canada/Mexico)

## Medical Professionals

Dentist

Dietitian

Medical Lab/Technologist

Nutritionist

Occupational Therapist

Pharmacist

Physician (teaching/research)

Physiotherapist/Physical Therapist

Psychologist

Rec. Therapist

RN

## Support Professionals

Accountant

Management Analyst

Computer Systems Analyst

Biochemist

Biologist

Chemist

Epidemiologist

Geneticist

Pharmacologist

Research Assistant

# Allied Health Professionals – Immigrant Visa Options

- PERM (EB-2 or 3)
- National Interest Waiver (EB-2)
- Outstanding Researcher or Professor (EB-1)

# Keys to Success

- Early & Open communication
- When to call immigration counsel:
  - *Case initiation*
  - *Government audit*
  - *Changes in work duties, location, or pay*
  - *Changes in organizational structure*
  - *Strike, lockout, furlough, or layoffs*
- Identify Organizational Immigration Policy
- Begin Immigration Process in Advance



# Contact Information



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# Thank you!

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