

## PRACTICAL GUIDE TO CONRAD WAIVERS: THIRTY, ... TWO, ONE, GONE!

by Rita Sostrin and Sarah Baker\*

### BACKGROUND

International Medical Graduates (IMGs) account for over 25 percent of the 902,000 physicians currently practicing medicine in the United States today.<sup>1</sup> An IMG who enters the United States to participate in graduate medical education (GME) through a residency or fellowship program often does so in J-1 status. All IMGs who are involved in GME in J-1 status are subject to the two-year foreign residence requirement, which obligates them to return to their home country or country of last permanent residence for at least two years prior to being eligible to obtain most other immigration benefits.<sup>2</sup> A few limited waiver options are available to physicians who do not wish to fulfill the two-year requirement, one of which is a recommendation by an Interested Government Agency (IGA).

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**Rita Sostrin** is a founding partner of Sostrin Immigration Lawyers, LLP. Ms. Sostrin focuses her practice on immigration of individuals of extraordinary abilities as well as international physicians and researchers. Throughout her professional career, Ms. Sostrin has represented a diverse array of clients across the United States and abroad, handling all aspects of employment-based immigration for leading academic institutions, hospitals, and scientific laboratories. She frequently receives invitations to speak at national and regional conferences and to write for legal publications. Ms. Sostrin is included in *The International Who's Who of Corporate Immigration Lawyers and Chambers USA*. She was honored by AILA's Presidential Award for her service as chair of the California Service Center Liaison Committee in 2008. She currently serves as the vice-chair of AILA's Health Care Professionals/Physicians Committee, member of AILA's Board of Publications, and editor of AILA's annual conference handbook.

**Sarah J. Baker** is a graduate of McGill University's Faculty of Law (Montreal, Canada) and the LL.M. program at Lewis & Clark College (Portland, OR). As a Law Clerk at Wolfsdorf Immigration Law Group, she assists in preparing nonimmigrant and immigrant visa petitions and J-1 waiver applications for medical researchers and foreign medical graduates.

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

<sup>2</sup> Section 212(e) of the Immigration and Nationality Act of 1952 (INA), Pub. L. No. 82-414, 66 Stat. 163 (codified as amended at 8 USC §1101 *et seq.*).

Prior to 1994, only federal agencies had IGA waiver authority. However, in 1994, as a result of an initiative led by Senator Kent Conrad (D-ND), Congress allowed state agencies to recommend J-1 waivers on behalf of physicians engaged in clinical practice within designated medically underserved areas.<sup>3</sup> Under the Conrad waiver program, a clinician may receive a waiver of the two-year requirement if he or she agrees to practice in an underserved area designated by the U.S. Department of Health and Human Services (HHS). This program was created in an effort to address the chronic shortages of primary care and mental health clinicians in selected communities around the nation. States that choose to participate may request up to 30 such waivers per fiscal year. Hence, the program was nicknamed the "Conrad State 30" waiver program.<sup>4</sup>

The Conrad State 30 program was originally set to expire on June 1, 2008.<sup>5</sup> However, on October 10, 2008, the President signed legislation to extend the program through March 6, 2009.<sup>6</sup> On March 4, 2009, the House of Representatives passed a bill further extending the program, but at the time this article was finalized, the Senate had not yet taken any action.<sup>7</sup> The October 2008 legislation extending the program increased from 5 to 10 the number of "flex slots," which allow states to recommend waivers for physicians serving populations experiencing medical shortages but working outside of federally designated shortage areas. This program is an important source of qualified physicians for medically underserved areas and populations.

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<sup>3</sup> Immigration and Nationality Technical Corrections Act of 1994 (INTCA), Pub. L. No. 103-416, 108 Stat. 4305, §220; INA §214(l).

<sup>4</sup> Originally, the program was called Conrad State 20, designating the number of waivers states were allowed to grant per fiscal year. The number increased from 20 to 30 in 2004.

<sup>5</sup> See L. Aronovitz, "Foreign Physicians, Preliminary Findings on the Use of J-1 Visa Waivers to Practice in Underserved Areas," U.S. Government Accountability Office (May 2006).

<sup>6</sup> Pub. L. No. 110-362. See "President Signs Conrad 30 Program Extension," published on AILA InfoNet at Doc. No. 08101063 (posted Oct. 10, 2008).

<sup>7</sup> See "House Passes Extensions for Conrad 30 and Religious Worker Programs," published on AILA InfoNet at Doc. No. 09030470 (posted Mar. 4, 2009).

Since its creation, the Conrad State 30 waiver program has become an irreplaceable strategy for qualifying International Medical Graduates for waivers of the two-year foreign residence requirement. Today, every state in the U.S., as well as the District of Columbia, Puerto Rico and Guam, offers a Conrad waiver program through a relevant health agency. This article intends to provide a general overview of the Conrad waiver program and review the basic steps required to prepare a Conrad waiver application. While each agency that supports J-1 waivers through this program has defined its own guidelines tailored to meet the specific needs of the state it serves, several requirements are common across the board. When preparing a Conrad waiver application, it is important to understand both the general requirements and the state-specific guidelines in order to ensure success.

#### STANDARD REQUIREMENTS FOR CONRAD WAIVERS

The exact requirements for qualifying for a Conrad State 30 waiver vary from state to state. However, the following requirements generally appear in every state's guidelines:

- The IMG must hold a full-time offer of employment (40 hours per week) in a federally designated primary care health professional shortage area (HPSA) (or mental health HPSA in the case of a psychiatrist) or medically underserved area/population (MUA/MUP).
- The IMG must agree to serve for a period of no less than three years.
- States also have the flexibility to allow up to ten of their 30 state J-1 waiver recipients to work in an area not designated as an HPSA or MUA/MUP, provided that the sponsoring facility serves individuals residing in underserved areas (the so-called "flex slots").
- While the program was originally created for primary care physicians, it can now be applied to specialists. In order to receive a waiver for a specialist, a sponsoring agency must determine that the service area has a shortage of physicians practicing that particular specialty.
- There must be a written contract between the employer and the IMG.
- The IMG must agree to begin practice within 90 days of approval of the waiver by U.S.

Citizenship and Immigration Services (USCIS).

- The IMG must sign a statement that he or she has not applied for another Conrad State 30 waiver in another state.
- If the IMG's home country funded his or her medical education, the IMG must submit a no-objection letter from the home country.
- The IMG must sign a statement that he or she understands the policies of the J-1 waiver program, agrees to comply with them, and that all of the information provided in the application is accurate.
- The practice site must demonstrate evidence of unsuccessful efforts to recruit a physician who is a U.S. worker for the vacancy.

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.<sup>8</sup> Once the State Health Agency makes a recommendation for a J-1 waiver, it is forwarded to the Department of State (DOS) for its recommendation. If DOS recommends the waiver, it is forwarded to USCIS in the Department of Homeland Security (DHS) for final approval.<sup>9</sup> Upon final approval by USCIS, the physician must seek H-1B status in order to start work in the underserved area pursuant to his or her three-year contract. Prior to 2004, J-1 waiver recipients were counted against the annual H-1B cap of 65,000. However, IMGs who receive a Conrad waiver are no longer subject to the annual H-1B cap.<sup>10</sup>

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<sup>8</sup> See General Accountability Office (GAO), "Data on Use of J-1 Visa Waivers Needs to Better Address Physician Shortages," GAO-07-52 (Nov. 2006).

<sup>9</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 (DOS). While the DOS recommends J-1 waiver requests, the Department of Homeland Security (DHS) has the final authority to determine whether the exchange visitor is subject to the home residency requirement and to approve the waiver.

<sup>10</sup> Act to Improve Access to Physicians in Medically Underserved Areas, Pub. L. No. 108-441, 118 Stat. 2630, §1(b) (Dec. 3, 2004); INA §214(l)(2)(A).

## AN EASY FIVE-STEP GUIDE TO PREPARING A CONRAD WAIVER APPLICATION

### Step 1: Obtain a Case Number from the Department of State's Waiver Review Division

All IMGs seeking a J-1 waiver must first obtain a case number by filling out an online application with the DOS Waiver Review Division.<sup>11</sup> While the DOS previously offered a choice of either online or paper submissions, as of February 1, 2009, case numbers may only be reserved online.<sup>12</sup> The online application process involves filling out Form DS-3035 electronically via the DOS's website, printing it out, and then mailing the hard copy of the DS-3035, a processing fee of \$215 (in the form of a cashier's check or money order), and additional supporting documents to the Waiver Review Division lockbox, located at P.O. Box 952137, St. Louis, MO 63195-2137. The online application creates a bar-coded form that will facilitate processing by the Waiver Review Division and, thus, reduce processing times. Electronic submissions of the case number request reduce data entry and processing errors, since the exchange visitor or the attorney is responsible for filling out the form. Upon completing the electronic DS-3035 form, a case number is automatically generated.

If the IMG previously obtained a case number for another waiver application, the same case number must be used for all subsequent applications.<sup>13</sup> However, for each waiver application filed, the IMG must submit a new processing fee to DOS.<sup>14</sup> The case number must appear on every page of the IMG's waiver application when it is submitted to the state health department for review. Note that the DOS allows only one waiver application to be filed at a time, if the application is based on a recommendation by an interested government agency.<sup>15</sup> For instance, an exchange visitor may not apply for a Conrad waiver in two states at the same time. How-

<sup>11</sup> <https://j1visawaiverrecommendation.state.gov/>.

<sup>12</sup> "DOS Waiver Office Advice on Completing the Online DS-3035," published on AILA InfoNet at Doc. No. 09012964 (posted Jan. 29, 2009).

<sup>13</sup> DOS, Bureau of Consular Affairs, "Waivers of INA 212(e)—Frequently Asked Questions," available at [http://travel.state.gov/visa/temp/info/info\\_1296.html](http://travel.state.gov/visa/temp/info/info_1296.html).

<sup>14</sup> *Id.*

<sup>15</sup> 22 CFR §41.63(c)(4)(iii). Note that this does not preclude the alien from simultaneously applying for a hardship or persecution waiver.

ever, if one application is denied, a subsequent application supported by another state's department of health may be filed.

### Step 2: Examine State's Conrad 30 Requirements and Contact the Program Administrator

Though there are many common elements for Conrad 30 waiver applications in each state, health departments have the ability to tack on state-specific procedures to their waiver programs. For this reason, it is essential that practitioners thoroughly examine the particular requirements of the waiver program for the state in which the IMG plans to apply. Program information is often available on the websites of state health departments or can be obtained by contacting the state's waiver program administrator. Some states, such as Michigan,<sup>16</sup> have particular procedures which must be observed in order to obtain Conrad 30 program application materials. States often change their rules, and the guidelines posted online may not be the latest incarnation of the program. For example, the Texas program is currently in the process of revising its guidelines with the view of adding "flex slots" for the first time in the program's history.<sup>17</sup> Therefore, it is advisable to speak with the program administrator directly (and early in the process) to obtain details about any unique or recently changed program requirements and procedures that may not be outlined on the health department's website.

When contacting a state's Conrad 30 program administrator, consider asking the following questions:

- Are there any procedures, such as site approval or pre-authorization, that must be completed before a waiver application can be submitted?

Some states require applicants to obtain pre-approval before submitting a waiver application to the department of health. For example, under South Carolina's program, "all employers must be pre-approved by the Primary Care Office (PCO) and assigned a J-1 waiver slot before a waiver application will be

<sup>16</sup> Michigan Health Council, Medical Opportunities in Michigan, available at [www.mimom.org/hpsa.php?inc=j-1\\_visa\\_info](http://www.mimom.org/hpsa.php?inc=j-1_visa_info).

<sup>17</sup> Texas Department of State Health Services, available at [www.dshs.state.tx.us/chpr/j1info.shtm](http://www.dshs.state.tx.us/chpr/j1info.shtm).

accepted for processing.”<sup>18</sup> The PCO then issues a Slot Assignment Letter, which must be submitted as part of the waiver application. In Massachusetts, if the waiver application is for a primary care or a mental health physician applying to work in an area with a shortage designation score of 07 or higher, the state recommends that the IMG first apply for a primary care waiver through the federal program administered by HHS.<sup>19</sup> Failing to follow these state-specific procedures will result in the rejection of the waiver application. Thus, it is imperative to carefully evaluate the most recent program guidelines prior to submitting the application.

- What is the filing deadline?

Not all states use the federal fiscal year (October 1 to September 30) to establish their deadline to receive waiver applications. For applications filed in Texas, for instance, the state fiscal year is September 1 to August 31,<sup>20</sup> and the specific date on which the state begins accepting waiver applications has changed from year to year. In the case of Massachusetts, applications can only be submitted from October 1 to January 15.<sup>21</sup> As most states review waiver applications on a FIFO (first-in-first-out) basis, a timely filing is certainly an important element of success, especially in populous states that use all of their 30 waiver slots.

- Is there an application filing fee?

Most Conrad programs do not charge a filing fee, and the only government fee associated with the waiver application is the \$215 fee charged by the DOS. However, some states require applicants to pay a filing fee when submitting a waiver application to the health department. In fact, while certainly unusual, a program like in the state of Ohio charges a whopping \$3,571 processing fee.<sup>22</sup> Certainly, a medical resident with limited financial resources who is applying for a waiver in Ohio would want to know about this fee in advance.

- Typically, how many of the 30 slots are filled each fiscal year?

The number of waiver slots filled can change from year to year depending on the demand for waivers. However, knowing how many slots a program has traditionally been able to fill is helpful in managing the client’s expectations, selecting a job in the state which offers a greater likelihood of yielding an available waiver slot, and strategizing last-minute filings. Accordingly, it is important to check with the state in order to know what to expect.

- How quickly are the slots usually filled after the filing deadline?

Obtaining this information is critical, particularly if a client has a few job offers from different states. Obviously, states that do not fill their waiver slots right away offer a higher chance of success than more populous states, such as New York, that routinely receive more than 30 applications on the first day.<sup>23</sup> For instance, Massachusetts’ slots do not fill up on the first day the state accepts applications, and all applications are considered on merit, rather than in the order received.<sup>24</sup>

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<sup>18</sup> South Carolina Department of Health and Environmental Control, Primary Care Office, available at [www.scdhec.net/health/opc/j1.htm](http://www.scdhec.net/health/opc/j1.htm).

<sup>19</sup> The Commonwealth of Massachusetts, Executive Office of Health and Human Services, Department of Public Health, “Massachusetts Conrad-30/J-1 Visa Waiver Policies,” available at [www.mass.gov/Eeohhs2/docs/dph/com\\_health/j1\\_visa\\_waiver\\_policies.pdf](http://www.mass.gov/Eeohhs2/docs/dph/com_health/j1_visa_waiver_policies.pdf).

<sup>20</sup> Texas Department of State Health Services, available at [www.dshs.state.tx.us/chpr/j1info.shtm](http://www.dshs.state.tx.us/chpr/j1info.shtm).

<sup>21</sup> The Commonwealth of Massachusetts, Executive Office of Health and Human Services, Department of Public Health, available at [www.mass.gov/?pageID=eohhs2terminal&L=5&L0=Home&L1=Provider&L2=Guidelines+and+Resources&L3=Guidelines+for+Services+%26+Planning&L4=Health+Systems+%26+Workforce+Development&sid=Eeohhs2&b=terminalcontent&f=dph\\_com\\_health\\_p\\_j1\\_visas&csid=Eeohhs2](http://www.mass.gov/?pageID=eohhs2terminal&L=5&L0=Home&L1=Provider&L2=Guidelines+and+Resources&L3=Guidelines+for+Services+%26+Planning&L4=Health+Systems+%26+Workforce+Development&sid=Eeohhs2&b=terminalcontent&f=dph_com_health_p_j1_visas&csid=Eeohhs2).

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<sup>22</sup> Ohio Department of Health, J-1 Visa Waiver, available at [www.odh.ohio.gov/odhPrograms/chss/visa/visa1.aspx](http://www.odh.ohio.gov/odhPrograms/chss/visa/visa1.aspx). Note that Ohio’s Conrad 30 waiver program policies and procedures are currently under review. The program is not accepting applications as of the writing of this article.

<sup>23</sup> Phone conversation of the author with Steven Swanson, Associate Health Coordinator, New York State Department of Health, Division of Health Facility Planning, on October 14, 2008. Mr. Swanson advised that he expects to receive 50-60 waiver applications on December 1, 2008, the first day of filing.

<sup>24</sup> The Commonwealth of Massachusetts, Executive Office of Health and Human Services, Department of Public Health, “Massachusetts Conrad-30/J-1 Visa Waiver Policies” available at [www.mass.gov/Eeohhs2/docs/dph/com\\_health/j1\\_visa\\_waiver\\_policies.pdf](http://www.mass.gov/Eeohhs2/docs/dph/com_health/j1_visa_waiver_policies.pdf).

- How and in what order are applications adjudicated?

Most states adjudicate applications on a FIFO basis. Assuming that the application meets the basic criteria for approval, the program administrator may contact the attorney to discuss any missing documents and issue a recommendation once the file is complete. However, this is a much more complex process in states that receive in excess of 30 applications. In those states, a substantive review is often conducted to give preference to the most meritorious cases. Alternatively, some states allocate waivers based on geographical locations or sponsoring employers' needs. Knowing the details of the process will allow the practitioner to competently advise the client and create a winning strategy.

- If applicable, does the state grant waivers to specialist physicians?

The Conrad program was created to alleviate the shortage of primary care physicians (defined as internal medicine, family medicine, pediatrics, OB/GYN) and psychiatrists<sup>25</sup> and did not originally consider applications of physicians practicing other medical specialties. Today, with increasing evidence of other shortages, almost all states accept waiver applications from specialist physicians. Naturally, a shortage must be established through submission of supporting evidence. Some states limit the number of slots allocated to specialist physicians or allow specialists to submit their waiver applications only if there are slots left after all primary care applications have been adjudicated. Other states offer very limited opportunities to specialist physicians. For instance, California allowed specialists to apply for the first time in August of 2008, just two months before the end of its fiscal year, when it became clear that the seven slots it still had remaining were not going to be filled. Thus, practitioners should keep in mind these limitations when representing a specialist physician.

- What types of underserved areas does the state consider?

Typically, most Conrad programs will entertain waiver applications where the IMG commits to work either in a Health Professional Shortage Area (HPSA)<sup>26</sup> or a Medically Underserved Area/Medically Underserved Population (MUA/MUP).<sup>27</sup> However, many states currently offer a limited number of "flex slots" which allow physicians whose employers are located outside of designated areas to qualify for waivers. These physicians must demonstrate that they are serving patients who do not have adequate access to medical care.

- Are there any reporting requirements once the waiver has been approved and the physician begins working in the underserved area?

Most states require that a physician who has qualified for a waiver periodically report to the sponsoring agency. This is necessary to ensure that these IMGs, in fact, complete their three-year commitment to the medically underserved area. Such reporting requirements usually involve submitting a statement during certain milestones in the service (e.g., upon completing one, two and three years) confirming the physician's employment at the sponsoring underserved facility. Once the waiver is approved, it is good practice to remind the IMG and the sponsoring employer of the reporting requirement to ensure compliance.

- Does the state require that the physician be paid a certain minimum wage?

The USCIS takes care of this issue through requiring that, after receiving the waiver, the IMG work for three years as an H-1B specialty occupation worker,<sup>28</sup> which has built-in prevailing wage requirements. However, some states impose their own wage minimums as part of waiver eligibility. California, for instance, uses the U.S. Department of Labor's (DOL) Online Wage Library<sup>29</sup> to establish the minimum wage a physician must be paid if he or she is granted a Conrad 30 waiver, thus de-

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able at [www.mass.gov/Eeohhs2/docs/dph/com\\_health/j1\\_visa\\_waiver\\_policies.pdf](http://www.mass.gov/Eeohhs2/docs/dph/com_health/j1_visa_waiver_policies.pdf).

<sup>25</sup> 22 CFR §41.63(c)(4)(i).

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<sup>26</sup> Public Health Service Act, 42 USC §254e, §332; *see* 59 Fed. Reg. 3412 (Jan. 21, 1995).

<sup>27</sup> Public Health Service Act, 42 USC §254c, §330.

<sup>28</sup> INA §§101(a)(15)(H)(i)(b), 214(i).

<sup>29</sup> U.S. Department of Labor (DOL), Foreign Labor Certification Data Center, Online Wage Library, available at [www.flcdatcenter.com/](http://www.flcdatcenter.com/).

prising the employer of the ability to use an alternate wage survey.<sup>30</sup>

It is also important to fully apprise the employer of the documentation it will need to provide to prepare the application and its responsibilities once the waiver is granted. Providing such information will help ensure there are no miscommunications when preparing the waiver application, and in the future, when the physician is fulfilling his or her three-year service commitment.

### **Step 3: Confirm that Sponsoring Facility is Located in a Designated Underserved Area**

When preparing a Conrad 30 waiver application, it is imperative to ensure that the practice site is, in fact, located in an HPSA or MUA/MUP. While this information is available in the Federal Register, designations often change, and getting current information is critical. To do so, obtain the name of the county and number of the census tract in which the practice site is located by entering the facility work site address on the U.S. Census Bureau's American Fact Finder Website.<sup>31</sup> With this information, one can then obtain countywide HPSA and MUA/MUP listings on the HHS Health Resources and Services Administration (HRSA) website.<sup>32</sup>

Appropriate documentation confirming the HPSA or MUA/MUP listing should be collected at this time, as this information will need to be submitted in the waiver application. Such evidence could include printouts from the HPSA or MUA/MUP locator website confirming that the facility is located in an underserved area, a printout of the census tract map, and confirmation of the practice site's census tract number.

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<sup>30</sup> California Department of Health Care Services, CalSORH: J-1 Visa Waiver Package Checklist, available at [www.dhcs.ca.gov/services/rural/Pages/WaiverPackageChecklists.aspx](http://www.dhcs.ca.gov/services/rural/Pages/WaiverPackageChecklists.aspx).

<sup>31</sup> U.S. Census Bureau, American Fact Finder, available at [http://factfinder.census.gov/servlet/AGSGeoAddressServlet?\\_lang=en&\\_programYear=50&\\_treeId=420](http://factfinder.census.gov/servlet/AGSGeoAddressServlet?_lang=en&_programYear=50&_treeId=420).

<sup>32</sup> U.S. Department of Health and Human Services (HHS), Health Resources and Services Administration, Health Professional Shortage Areas (HPSAs), available at <http://hpsafind.hrsa.gov/>; HHS, Health Resources and Services Administration, Medically Underserved Areas/Medically Underserved Populations (MUAs/MUPs), available at <http://muafind.hrsa.gov/index.aspx>.

### **Step 4: Prepare and File the Waiver Application**

Having completed steps one through three, the attorney, IMG, and employer can begin to prepare the support letter and exhibits for the waiver application. The support letter outlining how the IMG qualifies for the Conrad 30 waiver should contain the following elements:

#### ***Confirmation of HPSA or MUA/MUP designation, explanation of the nature of the shortage area, and information about the facility***

The support letter should provide confirmation that the sponsoring facility is located in the HPSA or MUA/MUP and reference the documentation which evidences the federal designation. In addition to a printout from the Federal Register or the relevant website confirming the designation, other supporting evidence should be submitted. Specifically, it is helpful to include statistics, such as the poverty rate, and to describe the demographics of the population living in the underserved area. Information such as high poverty, mortality, teen pregnancy rates and other indicators of need could be helpful to establish that the area's residents have limited access to regular preventative medical care. Further, the support letter should explain the particular medical problems that the local population faces, further confirming the need for an additional physician in the area. Letters written by community officials, local leaders, and physicians, which express the need for the physician and explain the problems patients face in accessing appropriate medical care, also help substantiate the pressing need for access to medical care.

Alternatively, if the IMG will not be practicing in a facility located in a federally designated shortage area, he or she may still qualify for a waiver if the Conrad program offers the "flex" slot option that grants waivers to physicians who serve medically underserved populations. Practitioners should keep in mind that, while the "flex" slots are becoming increasingly popular with the Conrad programs around the nation, not all states offer them. Also, many states refrain from accepting or processing applications for "flex" slots until all applications by facilities physically located in underserved areas have been processed for the given fiscal year. Detailed evidence should be provided in support of the argument that the application merits one of the coveted "flex" slots. For instance, it is helpful to provide documentation confirming that surrounding areas have been designated as HPSAs or MUAs/MUPs. Clearly, if the sponsoring facility is

located across the street from a federally designated area, it would follow that it serves patients that live in or around the underserved area. If available, a helpful evidentiary strategy is to provide patient records which show their home addresses as located in the designated areas. To avoid possible violations of the Health Insurance Portability and Accountability Act of 1996, it may be a good idea to use only zip codes or a street address without a number (e.g., instead of 1234 Main Street, Anytown, CA, 56789, use Main Street, Anytown, CA, 56789). Again, letters from local community leaders and medical care providers are essential to demonstrate the need for a physician in the area.

The support letter should also describe the facility, the services it offers when fully staffed, and its patient base. Information concerning the percentage of patients who use Medicare or Medicaid to pay for medical services, or who are indigent or uninsured, is helpful to further establish the need for the physician in the area. To this end, a sliding-scale fee schedule should be submitted to confirm that the facility accepts all patients, regardless of their ability to pay for medical services.

***Explanation of the medical services the IMG will provide to the underserved population and confirmation of the IMG's professional qualifications***

The support letter should describe the specific medical services the IMG will provide to the underserved population and explain how this will address the problem of insufficient access to care. To this end, it is important to compare the facility's current staffing to what it should be if the facility were fully staffed. This would demonstrate the burden that is placed on the physicians currently practicing at the facility and how an additional physician would alleviate it.

Following from this, the letter should also explain the IMG's professional background, training, and qualifications to provide the specified services to the underserved patient population that the facility serves. Applicants should include a curriculum vitae and evidence of their medical license to work in the state (some states will accept evidence of a pending application), completion of the USMLEs (or equivalent licensing examinations), and receipt of a certificate from the Educational Commission for Foreign Medical Graduates (ECFMG). To further establish the IMG's qualifications, he or she should obtain several letters of reference from U.S. physicians familiar with the IMG's qualifications, such as

current or past employers or residency or fellowship directors. Some states require a minimum or maximum number of reference letters to be submitted as part of the waiver application.

***Evidence of recruitment and retention efforts***

The employer must demonstrate evidence of unsuccessful efforts to recruit an American physician for the vacancy. Such evidence can include letters from recruitment firms that conducted a physician search on the employer's behalf, copies of advertisements concerning the vacancy placed in medical journals, in national, regional, or local newspapers. Additional recruitment evidence often includes printouts of the job announcement on the employer's homepage, employment websites, professional associations, and copies of correspondence to regional medical schools detailing the available position.<sup>33</sup> Further, the employer should fully describe the efforts it will undertake to entice the IMG to remain at the practice site beyond the three-year service requirement.

***Explanation of the effect of a waiver denial***

The support letter must describe the effect on the underserved area if the waiver application is denied. Information concerning the number of physicians in the area, the wait periods patients would experience to see a physician, the distance patients would have to travel to obtain medical services, and other barriers and delays in access to medical care that would result are all relevant issues to address. Further, the letter should detail how the physician will be instrumental to fulfilling the employing facility's goal of providing comprehensive, affordable, patient-centered, high-quality medical care to all members of its service area regardless of their ability to pay.

***Confirmation of the existence of an employment contract between the IMG and the practice site***

The Conrad 30 program requires a written contract between the employer and the IMG that details the terms of the physician's employment during the three-year service period and confirms that the physician agrees to comply with the requirements of INA

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<sup>33</sup> If the employer wishes to qualify the IMG for permanent residence, the same ads could be used in connection with a subsequent PERM application. Obviously, the DOL rules must be followed when filing PERM applications, and additional recruitment may be necessary if the waiver recruitment materials do not meet those requirements.

§214(I).<sup>34</sup> The contract must state that the IMG will hold a full-time position (40 hours per week) in a federally designated HPSA or MUA/MUP area<sup>35</sup> (or an area that qualifies for a “flex” slot) for no less than three years.<sup>36</sup> Some Conrad programs, such as Mississippi,<sup>37</sup> require longer contracts. It must also state that the physician agrees to begin practice within 90 days of approval of the waiver by USCIS.<sup>38</sup> Many states do not allow non-compete clauses that require the IMG to leave the area if he or she changes jobs during or after the commitment period. However, the regulations prohibit non-competes only for federal agency waivers<sup>39</sup> and are silent on this issue in the description of Conrad waivers.<sup>40</sup>

The document describing the terms of employment must clearly resemble a formal employment contract. DOS will question documents that are not identifiable as employment contracts. For example, a letter of appointment from a university employer will not suffice as an employment contract, according to DOS.

***Special considerations when preparing a waiver for a specialist IMG***

Most states allow IMGs with specialty training to pursue Conrad 30 waivers. In order to receive a waiver for a specialist, a sponsoring agency must determine that the service area has a shortage of physicians practicing that particular specialty of medicine. Accordingly, evidence confirming the shortage of physicians in the relevant specialty must be submitted as part of the IMG’s waiver application. Examples of appropriate shortage evidence include letters from other local physicians explaining the need for an additional specialist in the area, reports from medical journals detailing the shortage of physicians in that specialty nationwide, or newspaper articles from the locality discussing the need for physicians in particular specialties.

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<sup>34</sup> 22 CFR §41.63(e)(3)(iii).

<sup>35</sup> 22 CFR §41.63(e)(3)(iv).

<sup>36</sup> INA §214(I)(1)(D).

<sup>37</sup> Mississippi requires four-year employment contracts. Mississippi Department of Health, Office of Health Policy and Planning, “Mississippi J-1 Visa Waiver Guidelines,” available at [www.msdh.state.ms.us/msdhsite/\\_static/resources/1490.pdf](http://www.msdh.state.ms.us/msdhsite/_static/resources/1490.pdf).

<sup>38</sup> INA §214(I)(1)(C)(ii).

<sup>39</sup> 22 CFR §41.63(c).

<sup>40</sup> 22 CFR §41.63(e).

The waiver application should be compiled according to the specific instructions provided by the state health department to which the IMG is applying. If the case is filed with the assistance of an attorney, the application should include Forms G-28 signed by the physician and the sponsoring facility. The IMG’s DOS case number must appear on every page of the application. Once complete, the application should be mailed to the appropriate office within the state’s department of health. Processing times vary from state to state and can range from a few days to several months. Thus, it is important to ensure that the IMG either has sufficient time left on the J-1 or is prepared to leave the United States and wait abroad. Once the state health agency recommends the waiver, it will forward the recommendation letter to the DOS, which will, in turn, send its own recommendation letter (if it concurs) to USCIS to complete the process and approve the waiver.

**Step 5: Prepare and Submit an H-1B Petition**

To fulfill the terms of the Conrad 30 waiver, the IMG will need to obtain H-1B status in order to complete the three-year service period.<sup>41</sup> An H-1B petition can be filed with USCIS once DOS has issued a recommendation that the waiver application should be granted.<sup>42</sup> Thus, if the IMG is still in the United States in valid J-1 status, he or she may qualify for a change of status to H-1B, assuming that all other H-1B requirements (*e.g.*, prevailing wage, licensure and credentialing) are met. The clock starts ticking toward completing the IMG’s three-year commitment once he or she starts working at the underserved facility. Failure to complete the full three-year term may result in a revocation of the waiver,<sup>43</sup> and physicians must be mindful of this requirement when selecting the job.

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<sup>41</sup> INA §214(I)(2)(A).

<sup>42</sup> 60 Fed. Reg. 53122, 53123 (Oct. 12, 1995); Legacy Immigration and Naturalization Service (INS) Memorandum, P. Virtue, “Waiver of Foreign Residency Requirement and Adjustment of Status for J-Nonimmigrants” (Feb. 17, 1998), published on AILA InfoNet at Doc. No. 98021740 (posted Feb. 17, 1998). See also “VSC/DOS Practice Pointer: Receiving the I-612 Decision,” published on AILA InfoNet at Doc. No. 08092461 (posted Sept. 24, 2008). But see “CSC and AILA General Liaison Meeting Agenda Items—01/30/2008,” published on AILA InfoNet at Doc. No. 08020772 (posted Feb. 7, 2008), claiming that “the H-1B petition should not be filed until the waiver is approved,” although “CSC does confirm petitioner information with the VSC database in some J-1 medical cases, but this does not change the petitioner’s burden of proof in these matters.”

<sup>43</sup> INA §214(I)(3)(A).

Transfer to another HPSA or MUA facility may be allowed only under limited extenuating circumstances.<sup>44</sup> The IMG is eligible to apply for adjustment of status only after completing the three-year commitment,<sup>45</sup> unless he or she chooses to qualify for a National Interest Waiver, which would extend the service commitment to five years.<sup>46</sup>

### CONCLUSION

The steps outlined above are an introductory guide intended to merely touch on the various complex issues involved in preparing a Conrad State 30 waiver application. The actual process of preparing a waiver application involves a strategic analysis of each individual case and a deep understanding of the interplay between federal law and specific state guidelines. However, this article can serve as background material to practitioners who are new to this area of law and are looking for a general understanding of Conrad waivers.

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<sup>44</sup> INA §214(l)(1)(C)(ii).

<sup>45</sup> INA §§212(e), 214(l)(2)(B).

<sup>46</sup> INA §203(b)(2)(B)(ii)(II).