



May 11, 2020

PM-602-0178

# Policy Memorandum

**SUBJECT:** Temporary Policy Changes for Certain Foreign Medical Graduates During the COVID-19 National Emergency

## Purpose

This Policy Memorandum (PM) provides guidance to U.S. Citizenship and Immigration Services (USCIS) officers in relation to H-1B foreign medical graduates who have received a waiver of the 2-year foreign residence requirement under section 212(e) of the Immigration and Nationality Act (INA) through the practice of medicine with or based on the recommendation of an Interested Government Agency (IGA)<sup>1</sup> or through the [Conrad State 30 program](#)<sup>2</sup> in response to the Public Health Emergency prompted by Coronavirus Disease 2019 (COVID-19). USCIS is issuing this PM to introduce temporary policy changes regarding the full-time work requirement for such foreign medical graduates and the provision of telehealth services by those foreign medical graduates in light of the evolving Public Health Emergency concerning the COVID-19 pandemic.

## Authorities

- INA 212(e), 8 U.S.C. 1182(e) – 2-year foreign residence requirement.
- INA 214(l), 8 U.S.C. 1184(l) – Restrictions on waiver.
- Title 8 Code of Federal Regulations (CFR) 212.7(c)(9) – Waivers under Pub. L. 103-416 based on a request by a State Department of Public Health (or equivalent).
- 22 CFR 41.63 – Two-year home-country physical presence requirement.

## Background

Certain J-1 exchange visitors are subject to a 2-year foreign residence requirement under INA 212(e), which requires them to return to their country of nationality or country of last residence for at least two years in the aggregate prior to being eligible to apply for an immigrant visa;

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<sup>1</sup> Currently, there are four agencies that have dedicated waiver programs for physicians: Department of Veterans Affairs, Department of Health and Human Services, the Appalachian Regional Commission, and the Delta Regional Authority. The agency must establish why a waiver is in the public interest.

<sup>2</sup> A state agency of public health or its equivalent may sponsor a physician through the Conrad 30 Waiver program to address the shortage of qualified doctors in medically underserved areas.

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adjustment of status; or a nonimmigrant visa, such as H-1B (with limited exceptions).<sup>3</sup> However, INA 214(l) contains provisions authorizing waivers of the 2-year foreign residence requirement for certain aliens, including foreign medical graduates who agree to work full-time (at least 40 hours per week) in H-1B classification for not less than three years in a shortage area designated by the U.S. Department of Health and Human Services (HHS) with a recommendation from an IGA or state agency of public health or its equivalent, or with the Department of Veterans Affairs (VA).<sup>4</sup>

On January 31, 2020, the Secretary of HHS declared a public health emergency under section 319 of the Public Health Service Act (42 U.S.C. 247d), in response to COVID-19 (Public Health Emergency).<sup>5</sup> On March 13, 2020, the President of the United States declared a National Emergency concerning the COVID-19 outbreak to control the spread of the virus in the United States.<sup>6</sup> On March 19, 2020, the Department of Homeland Security (DHS) identified occupations in healthcare and public health as essential critical infrastructure workers to assist state and local jurisdictions and the private sector while responding to COVID-19.

### **Policy**

#### **1. Assessment of Full Time Work Requirement During COVID-19 Public Health Emergency**

Foreign medical graduates seeking a waiver of the 2-year foreign residence requirement under INA 214(l)(1) by practicing medicine for not less than 3 years in an HHS-designated shortage area are required to agree to work full-time in H-1B classification. The same is true for foreign medical graduates employed by the U.S. Department of Veterans Affairs (VA) who are not required to practice medicine in an HHS-designated shortage area.<sup>7</sup> The foreign medical graduate will work in H-1B classification, and the contract must state that they will be working full-time, which is defined as not less than 40 hours per week.<sup>8</sup>

A failure to fulfill the terms of the contract with the health facility or health care organization named in the waiver application will generally result in the re-imposition of the 2-year home residence requirement.<sup>9</sup>

In order to address situations in which an H-1B foreign medical graduate is temporarily unable to work full-time due to quarantine, illness, travel restrictions, or other consequences of the pandemic during the declared Public Health Emergency period, USCIS officers will not consider such a failure to work full-time to be a failure to fulfill the terms of the contract under INA 214(l)(2)(B), as a matter of policy. This is a limited flexibility based on the authorities cited in

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<sup>3</sup> See INA 212(e). See INA 248.

<sup>4</sup> See INA 214(l). See also 8 CFR 212.7(c)(9).

<sup>5</sup> HHS, *Determination of Public Health Emergency*, 85 FR 7316 (Feb. 7, 2020).

<sup>6</sup> Proclamation 9994 of March 13, 2020, *Declaring a National Emergency Concerning the Coronavirus Disease (COVID-19) Outbreak*, 85 FR 15337 (Mar. 18, 2020).

<sup>7</sup> See INA 214(l)(C) and (D).

<sup>8</sup> See INA 214(l)(1)(C) and (D). See also 22 CFR 41.63(c)(4)(i) and (e)iii).

<sup>9</sup> See INA 214(l)(2)(B). See also 8 CFR 212.7(c)(9)(iv).

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this memorandum and only relates to the foreign medical graduate's eligibility for future immigration benefits that would be affected by the re-imposition of the 2-year home residence requirement as the result of a contract violation. It does not affect a petitioning employer's responsibilities under the statutes and regulations relating to H-1B nonimmigrants.

### **2. Telehealth Services**

The INA, as well as DHS and Department of State (DOS) regulations, are silent as to whether Conrad State 30 or IGA foreign medical graduates may provide telehealth services<sup>10</sup> to meet their service requirement. Given this silence, USCIS and DOS have decided to interpret the authorities cited herein as providing flexibility to these foreign medical graduates during the Public Health Emergency. Specifically, USCIS will allow the following:

For those foreign medical graduates currently employed by an IGA or through the Conrad State 30 program, USCIS interprets current regulations to allow those physicians to provide telehealth services during the Public Health Emergency. Those foreign medical graduates, if not working for the VA, must still be providing medical services through their contracting facility located in an HHS-designated shortage area, or through their contracting facility that serves patients who reside in such a designated area (FLEX 10). In no instance should the foreign medical graduate, other than a graduate employed by the VA, provide telehealth services to patients outside of the state of their contracting facility. Also, USCIS will not interpret the provision of such telehealth services to be a failure to fulfill the contract for the purposes of INA 214(l)(2)(B).

USCIS notes that if an employer offers foreign medical graduates currently employed by an IGA or through the Conrad State 30 program the flexibility to telework from their home, it must offer those same flexibilities to its U.S. workers similarly employed.<sup>11</sup>

### **Effective Date**

Provisions relating to the full-time work requirement will apply to any lapse in full-time employment related to COVID-19 that occurred from the beginning of the Public Health Emergency on January 27, 2020, through the end of the Public Health Emergency.

Telehealth services provisions will be effective from the publication date of this policy memorandum through to the end of the Public Health Emergency.

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<sup>10</sup> The Health Resources and Services Administration (HRSA) defines telehealth as “the use of electronic information and telecommunication technologies to support long-distance clinical health care, patient and professional health-related education, public health, and health administration. Technologies include video conferencing, the internet, store-and-forward imaging, streaming media, and terrestrial and wireless communications.” See HRSA, Telehealth Programs, <https://www.hrsa.gov/rural-health/telehealth> (last visited Apr. 16, 2020).

<sup>11</sup> See U.S. Department of Labor, “COVID-19 Frequently Asked Questions, Round 3” (Apr. 9, 2020), *available at* [https://www.foreignlaborcert.doleta.gov/pdf/DOL-OFLC\\_COVID-19\\_FAQs\\_Round%203.pdf](https://www.foreignlaborcert.doleta.gov/pdf/DOL-OFLC_COVID-19_FAQs_Round%203.pdf) (last visited Apr. 10, 2020).

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**Use**

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**Contact Information**

If USCIS officers have questions regarding this PM, they should direct them through their appropriate chains of command to the Office of Policy and Strategy.