The fastest growing pool of practitioner candidates are non-US Citizens. Many speak excellent English, are bilingual, possess outstanding communication skills, and are seeking longevity in a practice setting.

Sponsoring a candidate does not have to be an intimidating experience. Familiarize yourself and your team with the J-1 / H-1 visa sponsorship processes.
J-1 and H-1 Visas – What’s the Difference?

The J-1 is a temporary, nonimmigrant visa classification that is intended to promote international exchanges between the United States and other countries.

There are various J-1 programs that enable foreign nationals to come to the United States in various capacities, such as visiting professors, scholars, and professionals. The Educational Commission for Foreign Medical Graduates (ECFMG) sponsors International Medical Graduates (IMGs) for medical training programs (residencies and clinical fellowships). The length of a clinical training program can extend up to seven years. Upon completion of the visa period, the J-1 physician must return to their home country for at least 2 years before they can qualify for either an H-1B visa and/or permanent residence. However, in many instances, J-1 physicians are able to obtain waivers of their home residence obligations, generally by showing that their ongoing residence and employment in the United States will provide critically needed coverage to the indigent and medically underserved.

The H-1B is a more flexible workers visa. Unlike the J-1, there is no home country return requirement. Also, an H-1B holder can apply for a green card (permanent resident status) if desired and qualified. The H-1B is subject to much greater scrutiny than the J-1, in that an H-1B case must be approved by both the U.S. Customs and Immigration Service (USCIS) and the Department of Labor. In addition, it is the employer, rather than the foreign national, that needs to file the H-1B sponsorship material. The review and approval process can take up to 6 months, although there is a program known as “premium processing” that, for an extra filing fee, can speed up the processing period. In addition, there is a maximum limit, known as the “cap,” on the number of H-1B visas issued annually.

The J-1 Waiver Defined

J-1 Physicians, also known as Foreign Medical Graduates (FMGs) or International Medical Graduates (IMGs), are physicians from other countries who have sought and received a J-1 exchange visitor visa in order to pursue graduate medical education (GME) in the U.S. The J-1 visa is granted to an educational exchange program for up to 7 years. For medical practitioners it is used exclusively for residencies and clinical fellowships. J-1 status does not authorize employment as an attending physician or for moonlighting. When the visa expires, the physician must return to his/her home country for at least 2 years before he/she can apply for an H-1B visa and/or permanent visa in the U.S. However, a J-1 visa waiver eliminates the two-year home residency requirement, thereby allowing the physician to remain and practice in the U.S. The simplest and fastest means for securing a J-1 visa waiver is to have a request by a designated State health agency. In Virginia, that agency is the Virginia Department of Health (VDH).

J-1 Waiver Eligibility

Each state, including Virginia, has up to 30 J-1 visa waivers per year to sponsor eligible J-1 Physicians to work for eligible employers. Typically, Virginia does not use all of its allotted J-1 visa waivers.
Eligible Physicians must meet the following requirements:

- Have completed an ECFMG (Educational Commission for Foreign Medical Graduates) certificate, passed all 3 steps of the USMLE (United States Medical Licensing Examination), and completed a U.S. residency program
- Agree to begin practice within 90 days of receiving the waiver
- Practice for a minimum of 3 years in a HPSA, MUA/P or MHPSA (for mental health care providers)
- Already applied for or received a Virginia license to practice medicine
- Have an up-to-date CV which reflects all items above and contains current contact info

Eligible Employers must meet the following requirements:

- The practice site at which the J-1 Physician is being offered a job must be physically located in a HPSA, MUA/P or MHPSA (for mental health care providers)
- The practice must have attempted unsuccessfully to recruit a U.S. citizen or permanent resident physician for at least 6 months
- The practice owner may not have defaulted on a J-1 visa waiver contract or be in default with the NHSC or any state scholarship or loan repayment program
- Compensation offered to the J-1 Physician must be at least equal to the local prevailing wage for the position or the employer’s actual wage for similarly employed U.S. workers, whichever is higher.

**J-1 Waiver Application Process and Fees**

The employer is the entity which initiates the filing for a J-1 waiver based on a specific employment position that will increase the safety net to the indigent and medically underserved. There are several steps to the waiver process.

First, the J-1 Physician needs to apply for a J-1 visa waiver case number from the U.S. Department of State. This must be completed before submission of the employer’s J-1 waiver application to the Virginia Department of Health. The following outlines the process:

- The J-1 Physician must request the visa waiver case number; information to apply for the case number can be found at [http://travel.state.gov/](http://travel.state.gov/) (click on “Visas”)
- The J-1 Physician completes and sends a completed Waiver Review Application Data Sheet to the Waiver Review Division of the U.S. Department of State with the required information and fee (currently $215), following the application and mailing instructions on the website listed above
- The Department of State will send the J-1 Physician a J-1 visa case number and instructions on how to proceed with the application, including a complete list of documents that must be submitted to complete the waiver review application. The case number must be included on all documents related to the waiver correspondence

Next, the J-1 Physician and the employer need to finalize an employment contract that contains the following elements:

- Be for a period of 3 years or longer
• Include the full street address(es) and phone number(s) of all the site(s) where the J-1 Physician will practice
• Contain a statement by the J-1 Physician agreeing to meet the requirements set forth in Section 214 (I) of the Immigration and Nationality Act
• Indicate the schedule and the number of hours per week that the J-1 Physician will practice; this must be at least 40 hours per week for at least 4 days, not including travel and/or on-call time
• Include the fixed salary
• Not include any non-compete clause or other restrictive covenant preventing or discouraging the J-1 Physician from continuing to practice in any federally designated shortage area after the period of obligation has expired.

It is recommended that the J-1 Physician utilize the services of an immigration attorney to obtain the list of documentation needed from the practice site and the physician to complete a J-1 visa waiver application. It is recommended that the J-1 Physician does not use the employer’s attorney in order to avoid possible conflicts of interest.

The J-1 Physician and the practice site must compile the list of required documents and forward them to the physician’s immigration attorney.

The employer’s J-1 waiver application needs to include the following items:
• An original and a copy of the employment contract signed by both the employer and the J-1 Physician
• A letter requesting that the VDH act as an “interested government agency” and recommend a waiver on behalf of the J-1 Physician. The letter must also include:
  o Name and medical specialty of the J-1 Physician;
  o Qualifications of the J-1 Physician;
  o Work schedule for the J-1 Physician and a statement that the J-1 Physician will practice at least 40 hours per week during normal office hours at least 4 days per week (excluding on-call and/or travel time);
  o Description of the effect on the community if the waiver is denied.
• A completed “Medical Practice Site and Program Description” form
• Proof of prior 6-months efforts to recruit a U.S. citizen or permanent resident physician (including advertisements, postings on ppova.org and/or 3RNet, agreements with placement services, letters to medical schools, copies of resumes received, list of applicants interviewed, and the reasons for rejection)
• A copy of the employer’s Medicaid and Medicare Provider Agreements
• Proof of the practice site’s willingness to treat patients of all income levels. Such proof must include, at a minimum, a copy of the sliding fee scale and evidence of charitable care provided
• A statement from the employer indicating that the employer and its principals, such as administrators and medical directors, are not under investigation, indictment or conviction for violations of federal, state, or local laws, regulations, or ordinances

This document does not constitute legal advice, but serves as information only. An immigration attorney is recommended for all visa processes.
related to the medical practice. In addition, the statement should include that the employer is not the subject of any financial, legal or regulatory proceedings that could reasonably result in the practice site’s inability to function as an employer.

The J-1 Physician must provide:

- A completed J-1 Physician Assurances form
- A current CV
- At least 3 letters of recommendation in support of the waiver applicant’s professional abilities and qualifications
- A copy of the J-1 Physician’s current Virginia license to practice medicine or proof of application to obtain same
- Documentation of Board Certification or a letter from the director of the J-1 Physician’s residency program attesting to Board eligibility
- A copy of the completed Waiver Review Application Data Sheet, including the case number issued by the U.S. Department of State
- All copies of the Certificate of Eligibility for Exchange Visitor (J-1) Status
- All copies of the IAP-66 sheets issued by the US Information agency for each year the J-1 Physician maintained the J-1 visa status with no time gaps
- A copy of the J-1 Physician’s passport including all visa entries
- A copy of the U.S. Department of State letter assigning the case number
- Copies of any I-94 Entry and Departure Cards
- An explanation of any period spent in some other visa status, out of status, or outside of the U.S.

The attorney should complete the J-1 waiver application, and send it to the practice site and the physician for signatures. The attorney will then send the completed application to VDH (the original and one hard-copy application). Faxed or emailed applications will not be reviewed.

VDH will review the application. Generally, these reviews take 2-4 weeks to complete. VDH will notify the applicant or his/her legal counsel if missing documents or additional information is required for the review to proceed.

VDH will forward complete applications receiving favorable recommendations to the U.S. Department of State for review. VDH will notify the practice site in writing, via the attorney, that the application has been forwarded with a positive recommendation to the U.S. Department of State for subsequent submission to the INS for approval. The Department of State’s average processing time for the waiver application varies, however, these reviews generally take 6-8 weeks to complete.

Once the U.S. Department of State recommends the application for approval, it will forward the application to U.S. Citizenship and Immigration Services (USCIS) with a recommendation for approval. The INS will send notification directly to the J-1 Physician after it approves the application recommended by the U.S. Department of State. The review process at USCIS generally takes around 6-8 weeks. The waiver does not become final until it has been approved by the USCIS.
**J-1 Waiver Reporting Requirements**

The VDH requires regular and occurrence reports as follows:

- The J-1 Physician and the CEO/ED of the employer must provide a semi-annual Verification of Employment (VOE) form which verifies the J-1 Physician’s employment at the practice site. The first report must be submitted within 30 days of employment; subsequent reports must be completed every 6 months from the contract execution date, with a final report due upon completion of the 3-year contract.
- If the employment contract is terminated prior to its scheduled end date, the J-1 Physician and the employer must provide written notification and explanation.
- There are additional reporting requirements if the J-1 Physician transfers to another practice site.
- Failure on the part of the J-1 Physician to submit accurate and truthful semi-annual forms will result in a report of non-compliance to the INS.
- Failure of the CEO/ED or Administrator of the employer to submit accurate and truthful semi-annual reports will jeopardize future eligibility for J-1 placement at the practice site and may result in an out-of-compliance report for the J-1 Physician.

**J-1 Waiver VDH Point of Contact**

For more information on the J-1 visa waiver from the VDH, call (804) 864-7435 or email Incentiveprograms@vdh.virginia.gov. As of publication, the point of contact is Karen Lyons, Program Administration Specialist (Karen.Lyons@vdh.virginia.gov, (804) 864-7423).

**The H-1B Visa**

The J-1 waiver simply eliminates that J-1 Physician’s need to return to his/her home country. But it does not in-and-of-itself provide lawful immigration status. Therefore, under law, the physician needs to change into H-1B status and work for a total of three (3) years in this status for the employer that sponsored the J-1 waiver.

The most popular and sought-after nonimmigrant visa classification for foreign-born physicians practicing in the U.S. is the H-1B, which is a temporary worker visa classification that allows the physician to stay in the U.S. for up to 6 years. During this period of H-1B employment, it is permissible for a foreign physician to apply for permanent resident status (also known as a “green card”). From the employer’s standpoint, the H-1B visa classification provides a relatively time-efficient means to secure the employment services of foreign medical professionals and a relatively generous period of time of eligibility for them to work in the U.S., while seeking resident status (if so desired).

As noted above, all J-1 Physicians who received waivers based on their employment in a medically underserved area and/or a VA facility are obligated to work for their J-1 waiver sponsor for three years specifically in H-1B status.
The H-1B Visa Cap

H-1B visas are limited in number. The quantity of H-1B visas is not set by the demands for visas or need for medical practitioners, but rather is limited by legislative decision. Each year beginning on October 1st, 65,000 H-1B visas become available with an additional 20,000 supplementary visas reserved for foreign nationals holding advanced degrees (defined as a Master’s Degree or above that have been granted by U.S. universities).

Traditionally, the H-1B numerical cap is inadequate to satisfy the needs of the employer and employee communities. Typically, the number of H-1B visas available expires at some point during the fiscal year. When that happens, no more H-1B visas can be granted until the following year. As an example, in FY 2010, the H-1B numbers were depleted on January 27, 2011; in FY, 2011, the H-1B numbers ran out on November 22, 2011. Once this occurred, no further H-1B approvals can be granted until October 1, 2012 for cases that are subject to the H-1B cap.

But there are certain situations where H-1B petitions can be filed on a “cap-exempt” basis – that is, the above-mentioned restrictions do not apply. The most common situations for IMGs in avoiding the H-1B cap are the following situations:

- If a J-1 Physician has received a waiver of the two-year home residence obligation;
- For many (but not all) requests for H-1B extensions;
- If the employer is either a university or a non-profit, university-affiliated institution.

The definition of a non-profit and university-affiliated institution has been somewhat problematic. In previous years, non-profit hospitals and community health centers generally maintained a cap-exempt status, so that additional H-1B visas, beyond the numerical limit, could continue to be granted for practitioners requiring an H-1B visa for employment. However, a decision by the Administrative Appeals Office of the USCIS in December 2010 reversed this cap exempt status for most CHCs. Basically, in order for an employer to qualify for cap exempt status, the definition of “affiliation” requires not just an affiliation agreement, but rather “shared ownership and common control” with a university. This has proven to be a very high standard that has made many CHC’s subject to the H-1B cap. At present, it appears that the USCIS is reevaluating its definition on the issue of university affiliation. But until new regulations appear, many CHC’s will not qualify for an exemption of the H-1B cap.

Also, as noted above, J-1 Physicians who have received waivers through “interested government agencies,” including the Virginia Department of Health, are considered exempt from the quota and can apply for and be granted H-1B status. The cap does not affect their eligibility for employment.

Given the lead time required to interview, contract and credential a practitioner (typically 30 days for the credentialing process alone), physicians requiring H-1B visas are still worth consideration even though the visa quota has been met for this fiscal year. H-1B visa physicians will be eligible to work near the beginning of October 2012 if all the requisite paperwork has been completed in advance and is ready to submit for consideration as soon as the new fiscal year begins.
H-1B Application Process and Fees

An individual cannot apply for an H-1B visa; rather, H-1B status requires a sponsoring U.S. employer. Under law, only the employer can pay for H-1B visa filing fees and for attorney’s services. Conversely, it is unlawful for the IMG to pay either for the filing fees or for the attorneys fees.

The basic H-1B filing fees normally include a standard filing fee, a training fee (to fund the training of U.S. workers), and a fraud fee. These fees generally run about $2300, although that varies depending on the specifics of the situation and any changes in USCIS requirements. There is also an optional premium processing fee (currently $1225) that can be paid to expedite the processing of visa applications, and that compels USCIS to process an H-1B petition within 15 days.

Attorney fees will be incurred to provide counsel and prepare and file the required documents and forms. Attorney fees vary and need to be discussed openly and in advance with an immigration attorney. It is recommended that an attorney be used for all H-1B visa applications. The H-1B visa process is complicated and time-consuming. The H-1B review and approval process can take up to 6 months.