### **3RNet Annual Conference**

## Successful Immigration Programs for Healthcare Providers, Employers, and States

**September 12, 2023** 

Presented by: Kayla Hoel, Attorney Matthew Webster, Attorney





Immigration as Recruitment & Retention Tool

Overview of IMG Physician J-1 Waiver Programs

IMG Physician Retention & Permanent Residence

**New Developments** 



### **Key Learning Objectives**

New legal and congressional developments impacting IMG immigration

Brief review of the J-1 Exchange Visitor program and its relevance to IMG Physicians

Best practices in developing

J-1 waivers

What happens if a waiver case is denied – that is, what are the alternative visa options

H-1B status, J-1 waivers and changes in employment

Integrating immigration with recruitment & retention initiatives

### New Developments

### **Update on Hot Developments**

H-1B Flexibility for Physicians (Telehealth, moonlighting, etc.)

J-1 Waivers Through HHS and SCRC

EAD Extension Expedites for Healthcare Workers

Spousal H-4 EAD (automatic extensions)

Backlog of PNIW and other Permanent Residence Options



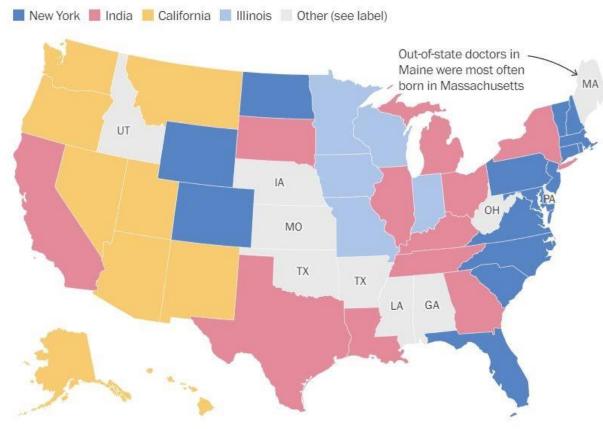
### **Emerging Physician Immigration Reforms**

- Increase in Waiver Numbers (35+)
- Expansion of Waiver Sponsors (SCRC, other regions?)
- Streamlining Process, removing obstacles in Conrad 30 state programs
- Lifting Per Country Immigrant Quotas
- Nonimmigrant Quota Exemptions

# Immigration as Recruitment and Retention Tool

#### Including India reshapes the doctor-origin map

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



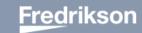
Van Dam, Andrew. "The states that produce the most doctors, artists and writers, and more," The Washington Post (Aug. 18, 2023), available at:

https://www.washingtonpost.com/business/2023/08/18/s tates-most-artists-writers/

Note: Includes employed physicians ages 30 to 65

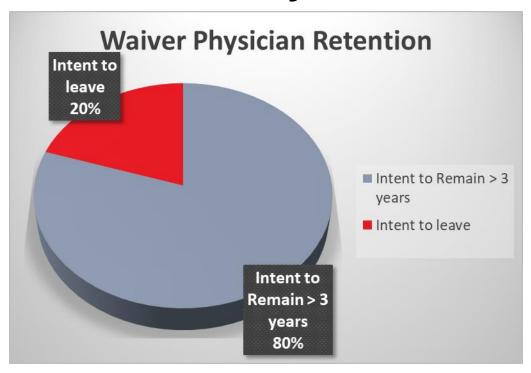
Source: Census Bureau's American Community Survey

DEPARTMENT OF DATA / THE WASHINGTON POST



- 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

### Retention >3 years



### **Long-term Retention**



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



### **Questions/Concerns**

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

### **Benefits**

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



**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.



### **Discussion**



How has your institution/state used immigration for physician recruitment/retention?

What has been your experience?

Unintended benefits?

Success stories?

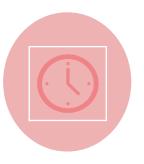
# Overview of IMG Physician J-1 Waiver Programs

### **Exchange Visitor Program: A Brief Primer**









### 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

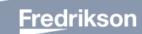


### Conrad State 30 Waiver Program: What Is It?

- 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**

### Main Areas for State Conrad Waiver Policy

- 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

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Alaska	1	0	0	1	0	0 9	0	- 1
Arizona	8	1	21	14	16		6	30
Arkansas	7	0	23	20	10	2	10	30
California	17	- 5	- 6	- 3	No Data A	Available		28
Colorado	4	0	6		9		- 4	10
Connecticut	2	1	27	0	30	(i) = (i)	- 0	30
Delaware	3	3	21	24	3		9	27
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Florida	3	- 1	25	- 1	28	3 H	- 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
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Kentucky	3	0	27	12	18		10	30
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Maryland	10	4	16	10	20		7	30
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Minnesota	5	2	23	11	19	20 10	8	30
Mississippi	0	0	10	8	2	8 6	3	10
Missouri	2	0	28	2	28	-	0	30
Montana	35	95 3		ta Ava		35 S	39	- 7
Nebraska	4	0	14	7	11		10	18
Nevada	2	0	13	0	15		1	15
New Hampshire	16	1	11	13	15	9 3	10	28
New Jersey	6	0	5	0	11	(i)	2	11
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New York	1	1	28	2	28		0	30
North Carolina	2	1	15	6	12	Š - 1	8	18
North Dakota	1	1	8	0	10	2.0	10	10
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Oklahoma	0	1	29	9	21		10	30
Oregon	13	1	16	8	22		3	30
Pennsylvania	2	2	26	7	22	2 4	- 4	30
Puerto Rico	0	0	0	0	0	-	0	0
Rhode Island	6	1	23	0	30	28 33	10	30
South Carolina	1	0	23	3	21	82 19	7	24
South Dakota	3	0	9	0	12		9	12
Tennessee	1	0	29	13	17	20 10	2	30
Texas	6	2	22	- 1	26	3	0	30
Utah	1	4	3	0	5	- 0	3	
Vermont	- 1	0	6	3	4	36 S	7	7
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	630	33 0	100		-	7.7	28	24

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

- Overall Conrad 30 usage peaked in FY20 at 1,182 but has remained above 1,000 waivers since FY18
- Since FY18, about
   % of states have
   filled all 30 slots

https://www.3rnet.o rg/j1-filled

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Alabama	4	6	18	19	24	15	12	15	13	10	23	28	20	20	13	22	16	18	17	26	27	2
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California	0	30	30	30	30		30	30	30	30	30	30	27	30	30	30	30	No Data	30	30	23	28
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Dist. Of Col Florida	17	25	30	30	30	29	29		30	30	30	30	30	30	_	No Data	7	30	30	30	NO Data	25
Georgia	20	20	30	30	28	18	8		12		23	18	30	30	21	28	30	30	30	30	30	30
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Kansas	0	4	14	26	17	17	14	16	13	16	22	23	28	24	25	30	25	30	30	30	29	18
Kentucky	20	30	30	30	30	30	30		30	30	30	30	30	30	30	30	30	30	30	30	30	30
Louisiana	0	15	15	13	10	15	22	-	15		19	18	20	12	17	12	6	12	12	15	22	30
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Mississippi	14	13	19	17	18	8	9	-	3	7	3	8	7	5	6	5	2	4	6	6	10	10
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Nebraska	13	17	15	7	13	13	10	14	9	11	12	13	21	14	15	13	15	18	19	14	25	18
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South Carolina	19	20	30	26	21	20	13	23	19	16	25	21	17	30	30	21	22	28	24	28	30	24
South Dakota	0	12	10	6	6	9	10	7	6	7	6	12	11	9	8	10	11	13	14	13	11	12
Tennessee	20	30	21	27	12	9	6	5	10	7	13	11	11	6	12	12	13	17	18	22	27	30
Texas	0	11	30	30	30	30	30	30	30	30	30	30	30	30	30	30	30	30	30	30	30	3(
Utah	18	17	4	6	5	4	1	3	1	1	3	2	4	3	1	4	5	7	9	3	5	
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Filled all slots	15	25	15 (GAO)	18	13 (GAO)	10	11	12	11	12	11	14	17	22	19	19	20 Total =	19	25	26	24	24

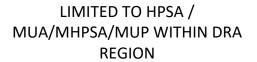
- While some states have historically always filled, newer additions are:
  - > Arizona
  - > Arkansas
  - > Louisiana
  - > Oklahoma
- States which used to fill but have not recently are:
  - > California
  - > Kansas
  - > North
    Carolina
  - > Washington

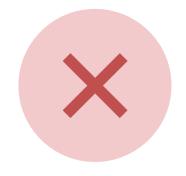
### Department of Health and Human Services Waivers

- 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







NO QUOTA



45-DAY MANDATORY
RECRUITMENT WITHIN
12 MONTHS OF SUBMISSION



SPECIALTY & PRIMARY CARE PHYSICIANS



### Appalachian Regional Commission (ARC) Waiver Program







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



### 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 if Waiver Denied

Option for HHS 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



### **Discussion**



What does your state prioritize in its Conrad waiver program?

How has your state waiver strategy changed since COVID-19?

Are you actively and strategically using all available IGA waivers? If not, why not?

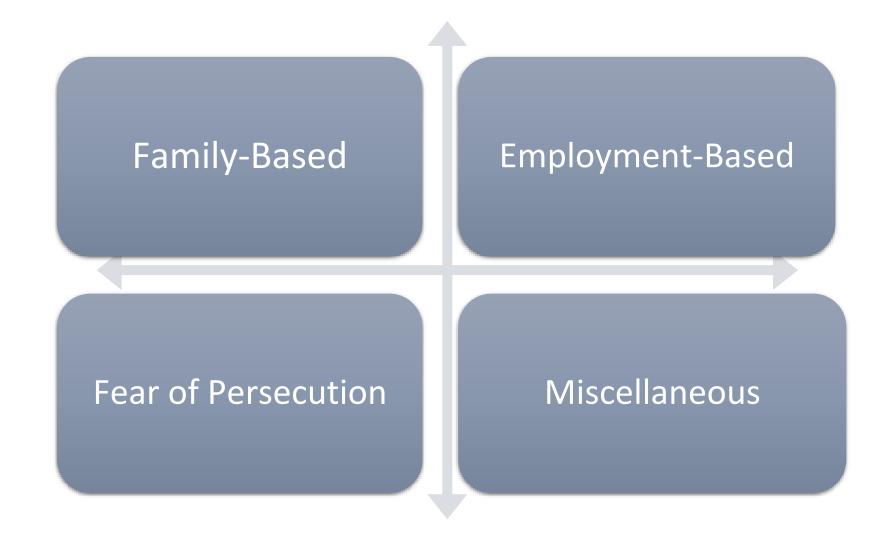
What are your obstacles to full waiver usage?

What opportunities do you see for J-1 waivers?

What are ways states/institutions have increased J-1 waiver usage?

# IMG Physician Retention & Permanent Residence

### **Basic Strategy Options for Permanent Residence**





### Permanent Resident Options

- 1. PERM Labor Certification
- 2. Physician National Interest Waiver (PNIW)

### **PERM Process**

Prevailing Wage Request  DOL sets wage level for metro area

• 6-9 months



 Recruitment to test the Labor Market

• 3 months for recruitment

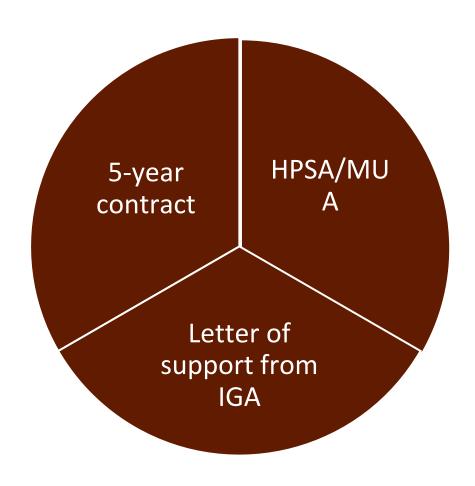
 10-12 months for PERM certification by DOL



I-140

• 15 days w/ PP; 2-5 months w/o

### **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)

## **Discussion**



How can permanent residence sponsorship drive physician satisfaction and retention for you?

How have you used permanent resident strategies in long-term retention?

Have you lost candidates over permanent residence issues?

What changes can you make to your immigration policies and sponsorship model to increase physician satisfaction and retention?



# Conrad-30 visa waiver physicians and their work: 2023 PRISM survey findings

#### Donald Pathman, MD MPH

Department of Family Medicine Cecil Sheps Center for Health Services Research UNC-Chapel Hill





## PRISM's Conrad-30 J-1 Visa Waiver Physician Survey

- Second annual survey May-June 2023
   (first was in 2022—report at <a href="https://3RNET.org/PRISM/Resources">https://3RNET.org/PRISM/Resources</a>)
- 27 states of PRISM Collaborative participated this year
- Full findings report available within weeks

## PRISM's Conrad-30 J-1 Visa Waiver Physician Survey

- Second annual survey May-June 2023
   (first was in 2022—report at <a href="https://3RNET.org/PRISM/Resources">https://3RNET.org/PRISM/Resources</a>)
- 27 states of PRISM Collaborative participated this year
- Full findings report available within weeks
- Today—look at data on how J-1 waiver physicians are doing in their jobs and the effects on their retention
  - a first look at data for SAMSHA/HRSA funded study!

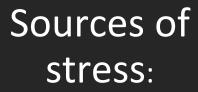
### The 319 physician respondents (20.5% response rate)

- 64% male; 69% married
- From: Asia 56%; North America 16%;
   South America 14%; Europe 7%; Africa 5%
- Specialties: specialist 63%; primary care 21%; psychiatry 9%; hospitalist 7%
- Practice types: academic 41%; CHC & CAH 9%; other 50%

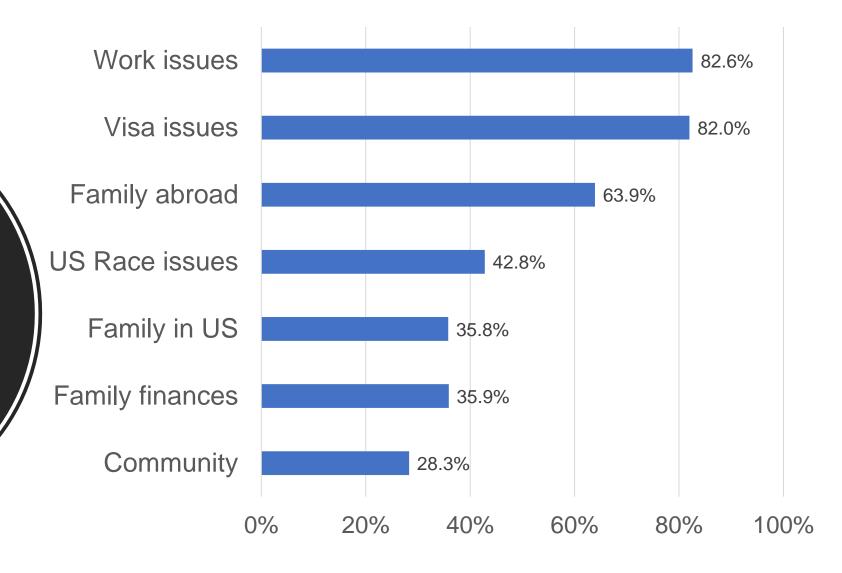
# Which is the most common source of stress for Conrad-30 physicians?



- family finances
- visa issues
- family in US
- family abroad
- work issues
- race issues in the U.S.
- community issues

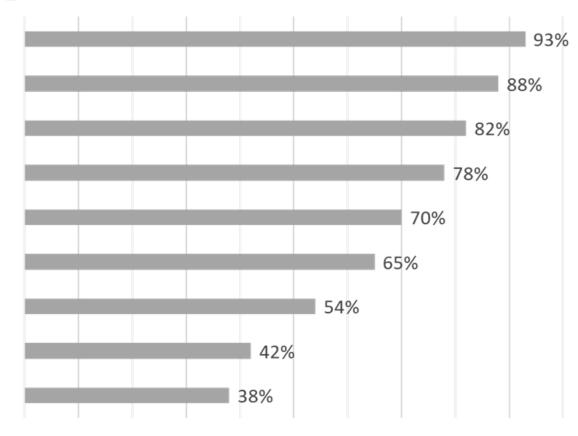


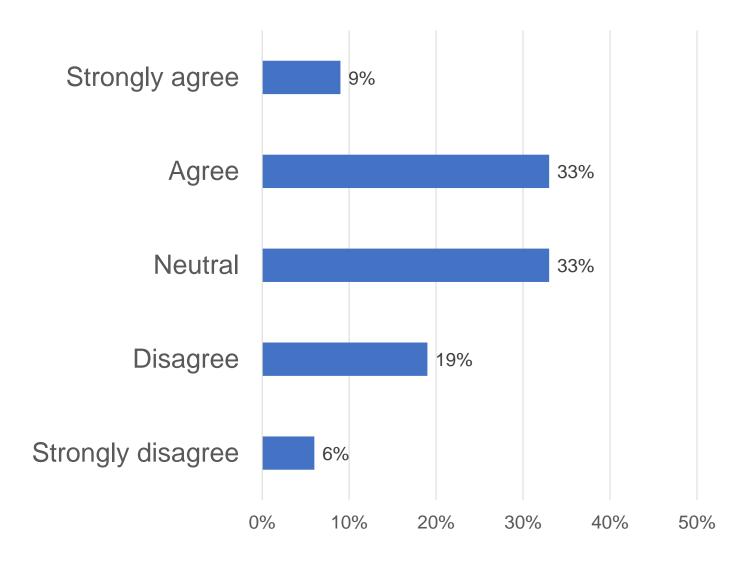
% respondents with moderate or severe stress from various sources



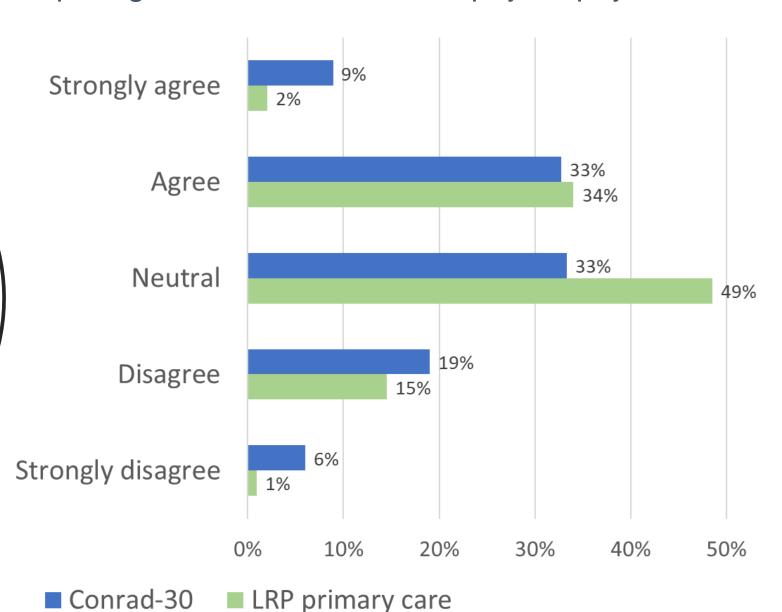
#### % physicians satisfied with various aspects of their job and work

How I get along with my physician colleagues My personal connection with my patients The gratitude my patients show me I can practice full range of services My current practice overall The effectivness of the practice administrator My compensation given my training Having input into administrative decisions Work leaving me enough personal time

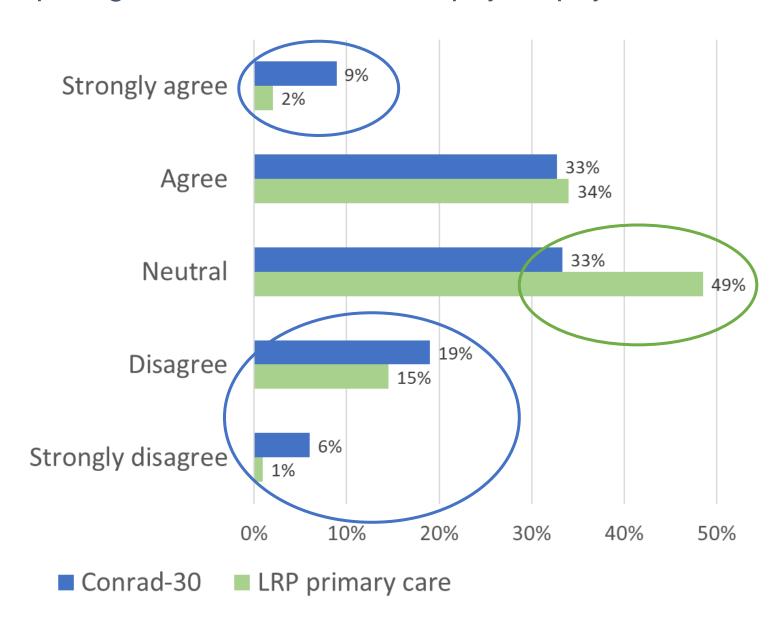




#### Comparing Conrad-30 to Loan Repayors physicians

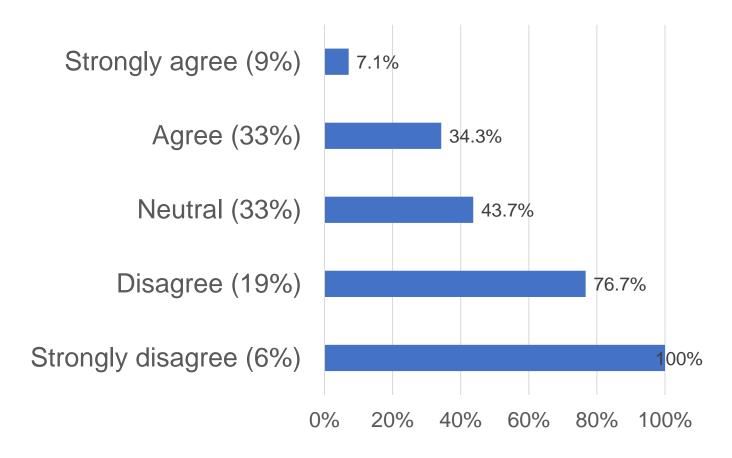


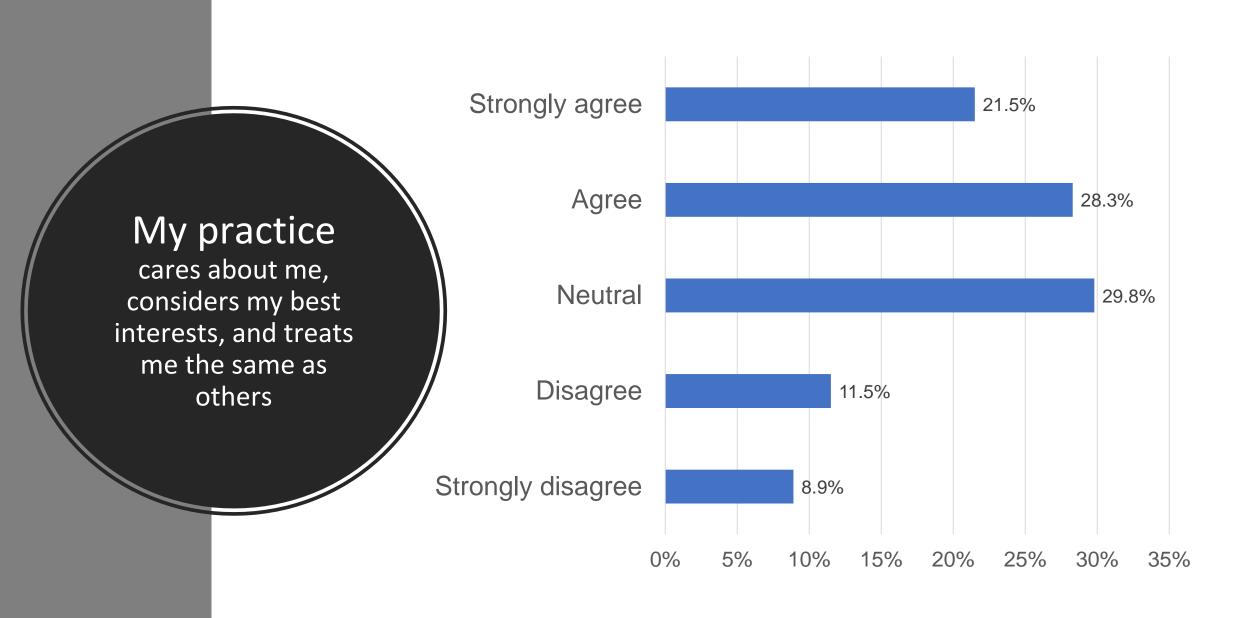
#### Comparing Conrad-30 to Loan Repayors physicians



- . . . they forced me to work 24/7 every other week in the hospital. . . when in the hospital I only had 2-4 hours of sleep average, for the past 2 years
- I am not listened to. They don't pay attention to my feedback. . . . They increased patient load on me without prior discussion. They placed me in a work environment where no one is willing to cover me with days off.
- I am working a lot of hours and I am on call every day. I have reported my concerns . . . but no changes have been made. I am the only one in my group taking call every single day and not compensated for it. I will thus be resigning and leaving the country before completing the waiver program to preserve my marriage and mental health.

# % likely or very likely to leave their practice within 24 months after completing visa waiver term



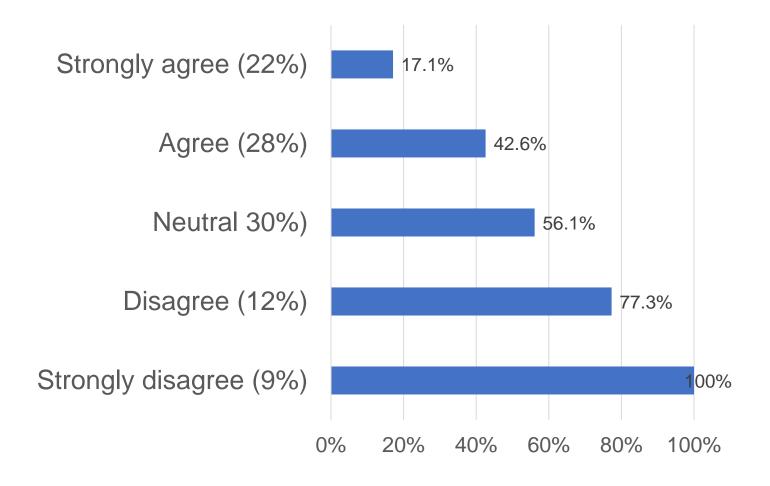


- I am not treated the same way as other non-J1 requiring American physicians. I feel being exploited based on my race, ethnicity and visa status. Administration doesn't pay attention to my goals and doesn't help me in achieving my goals. Workplace is toxic. If i were to do it all over again, I would not join this J1 waiver site.
- Abusive, hostile, derogatory, racist and discriminatory. Should be banned from sponsorship.
- I had to hire a lawyer. We have contacted the U.S. Equal Employment Opportunity Commission.

# % likely or very likely to leave their practice within 24-months after completing visa waiver term

### My practice

cares about me, considers my best interests, and treats me the same as others



# Summary conclusions about J-1 visa waiver physicians and their jobs/practices

- Work is the greatest single source of stress for physicians on J-1 visa waivers
- Nevertheless, most are happy with their jobs/practices
  - most of these plan to remain at least two years beyond their three-year visa waiver term
- About one-quarter feel their practice overworks and underpays them, does not care about their well-being and treats them different than others
  - nearly all of these physicians plan to leave their practices as soon as they can

## **Discussion**



How can permanent residence sponsorship drive physician satisfaction and retention for you?

How have you used permanent resident strategies in long-term retention?

Have you lost J-1 waiver physicians over permanent residence issues?

What changes can you make to your immigration policies and sponsorship model to increase physician satisfaction and retention?

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# Thank you!

